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THE

INDIAN PENAL CODE, (1)

(ACT XLV. OF 1860.)

WITH NOTES

BY

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P R E F A C E.

THE Penal Code was originally prepared by the Indian Law Commissioners when Mr. Macaulay was the President of that body,* and was laid before the Governor-General of India in Council in the year 1837. The Code was enacted by the Legislative Council during the present year (1860), with some important changes, but without any substantial alteration in the frame-work or phraseology of the original Code.

Until the law has received a construction from those who have authority to expound it, it is hoped that these notes on the text of the Code may be found useful.

They are, for the most part, compiled from the following authorities :—

The notes in which the framers of the original Code explain the principles adopted in its preparation ;

(*) "I only state a fact already generally known when I say that Mr. Macaulay is justly entitled to be called the author of the Indian Penal Code." Notes on the Report, &c. by J. M. Macleod.

The Reports (1846-1847) of the Indian Law Commissioners, Messrs. Cameron and Eliott, on the original Code ;

Notes on the first of these Reports, by Mr. J. M. Macleod ;

The several Reports of Her Majesty's Criminal Law Commissioners ; and various treatises on Criminal Law by English and American authors.

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ACT No. XLV. OF 1860.

THE INDIAN PENAL CODE.

IN attempting to place the whole law of a country in a written form before those who are to administer, and those who are to obey it, such a mutual relation will be found to exist between the several parts of the law, that no single and separate part can be put into writing in a perfect form, while the other parts remain imperfect. That portion, be it what it may, which is selected to be first formed into a Code, with whatever clearness and precision it may be expressed and arranged, must necessarily partake, to a considerable extent, of the uncertainty and obscurity in which other portions are still left.

Such is the relation between law generally and that department of it which defines offences and punishes them, that uncertainties in other portions of the law must especially be felt, if the criminal branch is the one first selected to be formed into a Code. For, in every system of law, the department which contains the penal provisions of the law, is added as a guard to the rest of the system, the existence of which, in some form or other, is assumed. A Penal Code assumes that there exist laws creating and defining rights, imposing duties, and providing means for the protection and enforcement of these rights and duties; and that what is commanded or

authorized by these laws may well be ascertained. The provisions of a Penal Code are only some of the means of compassing the ends of substantive laws, which are the laws that define civil rights and duties. The rights, duties, and powers which these laws create are secured by the penal law, which may be regarded as a part of the subsidiary law for causing the principal laws to be observed and executed. Some acts in breach of these principal laws are thought fit, on account of the mischievous consequences they have a natural tendency to produce, to be constituted crimes or offences; and to put a stop to such consequences, there is annexed to every such act a certain artificial consequence consisting of punishment to be inflicted on the doer.

A Penal Code, that is a Code of offences and punishments, is then an auxiliary to the other departments of the law. If many important questions concerning rights and duties are undetermined by the Civil law, it must often be doubtful whether the provisions of the Penal law do or do not apply to a particular case: we cannot know correctly if any given act is to be accounted an offence under the latter, while it is uncertain what recognition the Civil law gives to the right which has been infringed. A Penal Code therefore necessarily partakes of the vagueness and uncertainty of the rest of the law. It cannot be clear and explicit while the substantive Civil law and the law of procedure are dark and confused. While the rights of individuals and the powers of public functionaries are uncertain, it cannot always be certain whether those rights have been attacked or those powers exceeded.

But if a Code of offences and punishments is necessarily imperfect while other parts of a system of law are so, its defects may, in some degree, be removed by the mode in which the definitions of offences are framed. Seeing that this portion of adjective law should have regard rather to the motives and intentions of men's acts than to their strict conformity to law or to any loss or damage wrongfully caused by them, it may be possible to define an offence in such a way as to avoid nice distinctions

of substantive Civil law, and to provide punishments for grave infractions of rights without encountering difficult questions concerning the precise nature of those rights, or the things to which they extend, or the persons in whom they are vested.

The Indian Penal Code, although it comes into operation without the aid of a Code defining Civil rights, has this advantage that the law of procedure both in Civil and Criminal cases has been, in great measure, fixed and codified.

Many questions will doubtless still arise, occasioned by the uncertainty of other parts of the law, to perplex the criminal tribunals: but it will be found that the definitions and other provisions of this Code are framed to obviate, as much as may be, such difficulties.

CHAPTER I.

WHEREAS it is expedient to provide a General Penal Code for British India; It is enacted as follows:—

Preamble.

1. This Act shall be called THE INDIAN PENAL CODE, and shall take effect on and from the 1st day of May, 1861, throughout the whole of the Territories which are or may become vested in Her Majesty by the Statute 21 and 22 Victoria, chapter 106, entitled "An Act for the better Government of India," except the Settlement of Prince of Wales' Island, Singapore and Malacca.

Punishment of offences committed within the Indian Territories.

2. Every person shall be liable to punishment under this Code and not otherwise for every act or omission contrary to the provisions thereof, of which he shall be guilty within the said Territories on or after the said 1st day of May, 1861.

These sections declare the extent of the operation of the Code with respect to time, place, and person.

After the first of May, 1861, all offences contained in this Code will be punishable, whoever the offender may be. Every person is made liable to punishment, without distinction of nation, rank, caste or creed, provided only the offence with which he is charged has been committed in some part of British India.*

The powers of the Indian Legislature extend to certain specified persons and places. The Act of Parliament (3 and 4, Will. 4, c. 85) which defines this legislative power, authorizes the Governor-General in Council "to make laws and regulations for all persons, whether British or native, foreigners or others, and for all Courts of Justice, whether established by His Majesty's Charters or otherwise, and the jurisdiction thereof, and for all places and things whatsoever, within and throughout the whole and every part of the said (British) territo-

* As to persons of high rank, the Indian Law Commissioners (the authors of this Code) stated "Your Lordship in Council will see that we have not proposed to except from the operation of this Code any of the ancient Sovereign houses of India residing within the Company's territories. Whether any such exception ought to be made, is a question which, without more accurate knowledge than we possess, we could not venture to decide. We will only beg permission most respectfully to observe that every such exception is an evil: that it is an evil that any man should be above the law;—that it is a still greater evil that the public should be taught to regard as a high and enviable distinction the privilege of being above the law;—that the longer such privileges are suffered to last, the more difficult it is to take them away;—and that we greatly doubt whether any consideration, except that of public faith solemnly pledged, deserves to be weighed against the advantages of equal justice.

"The peculiar state of public feeling in this country may render it advisable to frame the law of procedure in such a manner that families of high rank may be dispensed, as far as possible, from the necessity of performing acts which are here regarded, however unreasonably, as humiliating. But though it may be proper to make wide distinctions as respects form, there ought in our opinion, to be, as respects substance, no distinctions except those which the Government is bound by express engagements to make. That a man of rank should be examined with particular ceremonies, or in a particular place, may in the present state of Indian Society be highly expedient. But that a man of any rank should be allowed to commit crimes with impunity must, in every state of society, be most pernicious."

It will perhaps be found that the position of those persons who are privileged by treaty or otherwise differs from that of other persons rather in regard to form of procedure than in actual liability. See Acts XXVII. of 1854, XXXVII. of 1858, &c.

ries." (s. 43). These are the defined limits of the legislative power.

Accordingly "within and throughout" British India, the Penal Code is applicable to all persons thus made subject to this authority of the Governor-General of India in Council. Whether such persons are the subjects of Her Majesty or the subjects of a foreign state, they all owe obedience to the law. A foreigner who enters the British territories and thus accepts the protection of our laws, virtually gives an assurance of his fidelity and obedience to them and submits himself to their operation.

All existing penal laws whatsoever, except such as are referred to in the last section of this chapter, are superseded by the Code to this extent, that persons liable to punishment under any of the provisions of the Code cannot be punished by any other law. The words "and not otherwise" seem virtually to repeal all former laws for the punishment of any offence which is made punishable by this law. But if there are acts or omissions made penal by any existing law, and no provision of this Code is found to reach them, that law will continue at present in force.

Offences committed prior to the 1st of May, 1861, will not come under the Code, at whatever time the offender may be arrested or tried.

3. Any person liable, by any law passed by the Governor General of India in Council, to be tried for an offence committed beyond the limits of the said Territories, shall be dealt with according to the provisions of this Code for any act committed beyond the said Territories, in the same manner as if such act had been committed within the said Territories.

Punishment of offences committed beyond, but which by law may be tried within the Territories.

This section relates to the extra-territorial operation of the Code. The words "for any act" &c. extend also to illegal omissions. (Section 32).

Many offences, such as Forgery, Offences relating to Coin and Government Stamps, Offences against the State, &c., may be committed beyond the limits of the British Territories, by persons subject to our laws, and it is necessary to provide for their punishment. It was a principle of the old Regulations to make punishable, by trial within the East India Company's territories, subjects of the Government committing crimes beyond the frontier, whether apprehended within or without the frontier. Those Regulations which were specially confined to *native* subjects and aliens living for six months within British territories, were repealed by Act I. of 1849, which enacts (Section 2) that "All subjects of the British Government, and also all persons in the Civil or Military Service of the said Government, while actually in such service, and for six months afterwards, and also all persons who shall have dwelt for six months within the British Territories under the Government of the East India Company, subject to the laws of the said Territories, who shall be apprehended within the said Territories, or delivered into the custody of a Magistrate within the said Territories, wherever apprehended, shall be amenable to the law for all offences committed by them within the Territory of any Foreign Prince or State; and may be bailed or committed for trial as hereafter provided, on the like evidence as would warrant their being held to bail or committed for the same offence, if it had been committed within the British Territories."

Persons liable by this law to be tried by our Courts must be "dealt with" according to the provisions of this Code.

The Act I. of 1849 applies to all subjects of Her Majesty and to persons who by reason of having taken service under the Government or dwelt within the British Territories for six months are considered as subject for a time to our laws.

It is by *dwelling* for six months under British law, that a person becomes bound by that law and amenable to our Courts for an offence committed beyond the frontier. A man may come to India upon a visit, to travel, to settle a particular business or the like, and the special purpose for which he

comes may keep him here for six months ; but he does not thereby become a *dweller* within British territories, so as to be amenable to the jurisdiction of the Courts for an offence committed after his departure from India.

Our Courts acquire jurisdiction under Act I. of 1849, when the offender is apprehended in British India or is delivered into the custody of a Magistrate here ; and when in custody, such offender must be "dealt with" according to the nature of his offence as such offence is defined and punished by this Code. Thus any person made amenable to the Court's jurisdiction by that Act who commits in Nepaul the offence of counterfeiting the coin of the Government of India, will be tried and punished under Chapter XII. of this Code.

Persons who commit offences in those foreign territories, where there are Courts of Justice appointed by the British Government may, it seems, be tried and punished for such offences under this Code.

A person brought by illegal violence or constraint within the British frontier and delivered to a Magistrate, having committed an offence beyond the frontier, is, it seems, liable to punishment under this Code for any offence which he may commit during his constrained residence here ; and this equally whether he is a person made amenable to our laws by Act I. of 1849 or a foreigner. The unlawfulness of his detention may justify certain acts done by him for the purpose of regaining his freedom, but it will not excuse him from trial and punishment for other distinct offences ; nor will it affect the jurisdiction of our Courts if he is a person made amenable by the Act.

4. Every servant of the Queen shall be subject to

Punishment of offences committed by a servant of the Queen within a Foreign allied State. punishment under this Code for every act or omission contrary to the provisions thereof, of which he, whilst in such service, shall be guilty on or after the said 1st day of May, 1861, within the dominions of any Prince or State in alliance with the Queen,

by virtue of any treaty or engagement heretofore entered into with the East India Company or which may have been or may hereafter be made in the name of the Queen by any Government of India.

By the Charter Act (3 and 4 W. 4, C. 85, S. 43), the Legislative authority of the Governor-General in Council is expressly declared to extend to "all servants of the said Company within the dominions of Princes and States in alliance with the said Company." This Section of the Code is doubtless enacted by virtue of the authority given by the words just quoted, the language being adapted to the change effected by the late Statute which transferred the Government of India from the East India Company to the Queen. The words "servant of the Queen" are afterwards explained. (Section 14.)

This Section makes the Penal Code applicable to offences committed by such persons within any foreign dominions which are in a state of amity and of *alliance* with this country. Where the alliance is by an express treaty whether of a general or limited kind there can be no question; and the relation which exists between the British Government in India and its subsidiary allies seems to constitute an alliance even in the absence of an express or formal written treaty.*

Many of the persons to whom the Code is made applicable by this Section would seem to come within the general provisions of the last preceding Section. Although the express authority of the Charter Act extends only to the power to legislate for Government servants in foreign states, the affirmative clause of that Statute, which has been quoted above, does not restrain the Legislative Council from making laws for the punishment of offences committed in foreign territories by persons not in the service of Government. The specification of a particular class ("servants of the said Company") as per-

* In the Statute 3 and 4, Vict. c. 56, the words "Native Princes or States in *subordinate alliance with or having subsidiary treaties* with the East India Company" occur.

sons for whom the Governor-General in Council is authorized to legislate does not affect the power to legislate for persons not of that particular class. The clause in question has been considered to be either perhaps unnecessary or as meant to remove all doubts as to the power to bind servants of the Government, in the particular case specified, who might not be (as occasionally happens) either natives or subjects of the British Territories or British subjects of Her Majesty.

The following Acts of Parliament by which persons are liable to be tried in India for offences committed elsewhere may be mentioned here.

The Statutes 26, Geo. 3, C. 57, (S. 29,) and 9, Geo. 4, C. 74, (S. 127), render amenable to the Supreme Courts in India all British-born subjects and all persons whatsoever in the service of the East India Company or of the Crown for criminal offences committed "in any of the countries or parts of Asia, Africa, or America, beyond the Cape of Good Hope, to the Straits of Magellan, within the limits of the exclusive trade of the said United Company."

By the Statute 33, Geo. 3, C. 52, S. 67, it is enacted that "His Majesty's subjects, as well servants of the United Company as others, shall be, and are hereby declared to be, amenable to all Courts of Justice, both in India and Great Britain, of competent jurisdiction to try offences committed in India, for all acts, injuries, wrongs, oppressions, trespasses, misdemeanors, offences, and crimes whatever, by them or any of them done, or to be done or committed, in any of the lands or territories of any Native Prince or State, or against their persons or properties, or the persons or properties of any of their subjects or people, in the same manner as if the same had been done or committed within the territories directly subject to and under the British Government in India."

Persons made amenable by these laws to Courts in India of competent jurisdiction, will, it seems, be dealt with according to the provisions of this Code.

As to offences committed at sea or in places within the jurisdiction of the Courts of Admiralty, various Statutes provide for their trial and punishment. Such offences may be tried by any Court in India which would have had cognizance of them if committed within the limits of its ordinary local jurisdiction. But if the trial is by any Court other than a Supreme Court, the punishment to be awarded must be according to the common course of English law and not according to this Code.*

By a late Statute (23 and 24 Vic. Chap. 88,) which extends to India certain provisions for Admiralty jurisdiction in the Colonies, it is provided that if any person charged in India with the commission of any offence at sea or within the Admiralty jurisdiction shall "at any time before his trial make it appear to the Court exercising criminal jurisdiction in the place where he is so charged or brought for trial, that in case the offence charged had been committed in such place he could have been tried only in the Supreme Court of one of the three Presidencies in India, and claim to be tried by such a Supreme Court accordingly, the said Court exercising criminal jurisdiction as aforesaid shall certify the fact and claim to the Governor of such place or Chief Local Authority thereof, and such Governor or Chief Local Authority thereupon shall order and cause the person charged to be sent in custody to such one of the Presidencies as such Governor shall think fit for trial before the Supreme Court of such Presidency." The Supreme Court is then empowered to try the offender as if the offence had been committed within the limits of the ordinary jurisdiction of such Court.

By the Stat. 9, Geo. 4, Chap. 74, (an act for improving the administration of criminal justice in the East Indies) Sec. 25, it is enacted that all offences prosecuted in any of his Majesty's Courts of Admiralty shall be subject to the same punishment as if such offences had been committed upon the land. Offences committed at sea, if the offenders are tried by one of the Supreme Courts may, it seems, now be punished under this Code.

* Statutes 12 and 13 Vic. Chap. 96, 18 and 19 Vic. Chap. 91, S. 21.

As to persons who, not being amenable by any law to the jurisdiction of our Courts, commit offences beyond the limits of the British territories and afterwards take refuge or are found within those limits, provision has been made by law (Act VII. of 1854,) for their apprehension and delivery up to justice.

5. Nothing in this Act is intended to repeal, vary, suspend, or affect any of the provisions of the Statute 3 and 4 William IV. chapter 85, or of any Act of Parliament passed after that Statute in any wise affecting the East India Company, or the said Territories, or the inhabitants thereof; or any of the provisions of any Act for punishing mutiny and desertion of Officers and Soldiers, in the service of Her Majesty or of the East India Company, or of any Act for the Government of the Indian Navy, or of any special or local law.

Certain laws not to be affected by this Act.

The Section (S. 43,) already quoted, of the 3 and 4, W. 4, C. 85, which defines the Legislative power of the Governor-General in Council has the following exceptions. :—

“ Save and except that the said Governor-General in Council shall not have the power of making any laws or regulations which shall in any way repeal, vary, suspend, or affect any of the provisions of this act, or any of the provisions of the acts for punishing mutiny and desertion of officers and soldiers, whether in the service of his Majesty or the said Company, or any provisions of any act hereafter to be passed in any wise affecting the said Company, or the said territories, or the inhabitants thereof, or any laws or regulations which shall, in any way, affect any prerogative of the Crown, or the authority of Parliament, or the constitution or rights of the said Company, or any part of the unwritten laws or constitution of the United Kingdom of Great Britain and Ireland, whereon may depend, in any degree, the allegiance of any persons to the Crown of the United Kingdom, or the sovereignty or dominion of the said Crown over any part of the said territories.”

It is hereafter explained what is meant by "special" and "local" laws. (Sections 41, 42.)

The laws relating to the Army and Navy which are here referred to are the several Acts and Articles of War from time to time passed, to secure discipline and to punish Military and other offences. Nothing in this Code affects any of their provisions. For the Native Army therefore the Penal Code which is provided by Act XIX. of 1847 will continue in force. For the British Army the Mutiny Acts and Articles of War are the laws which must still guide Courts Martial in the cases in which those Courts are authorized to supply the place of the ordinary criminal Courts and to try soldiers for crimes. But it is to be observed that Courts Martial in India are in such cases bound by the Articles of War to conform in their sentences to the Common and Statute law of England *as modified by laws applicable to India.*

CHAPTER II.

GENERAL EXPLANATIONS.

One peculiarity in the manner in which this Code is framed may here be noticed. To facilitate the understanding of the Code, Illustrations are used which exhibit the law in full action and shew what its effects will be on the events of common life.

A law may be expressed in language which is either too prolix or too concise. If an attempt be made by an enumeration of species to avoid the obscurity which arises from the use of general or abstract terms, doubts are created as to the comprehensiveness of the law : on the other hand, vague and extensive terms, if unexplained, convey no meaning to the reader, or are obscure and frequently ambiguous.

To unite conciseness with simplicity in definitions intended to include large classes of things, and to exclude others very

similar to many of those which are included, will often be utterly impossible. The best course under such circumstances appears to be that which the framers of this Code adopted, that is, to draw the text of the law in abstract and concise language, and to give at the same time an authoritative commentary on the text in the shape of Illustrations. If a definition be followed by a collection of cases falling under it and of cases which, though at first they appear to fall under it, do not really fall under it, the definition and the reasons which led to the adoption of it will be readily understood. The Illustrations will lead the mind of the student through the same steps by which the minds of those who framed the law proceeded, and may sometimes shew him that a phrase which may have struck him as uncouth or a distinction which he may have thought idle, was deliberately adopted for the purpose of including or excluding a large class of important cases.

Doubts must arise in practice respecting the interpretation of the most skilfully drawn laws. After a time such doubts in the interpretation of laws drawn in the usual mode are removed by decisions of the Courts on cases brought before them and the meaning of the Legislature is reached. The Illustrations of the Code are cases decided by the Legislature, decided contemporaneously with the enactment of the law, and they are authentic declarations of the scope and purpose of the law.

The function of the Illustrations is, as their name indicates, to illustrate. They are not intended to supply any omission in the written law or to put a strain on it. They make nothing law which would not be law without them. They illustrate the law, and as they do this with full Legislative authority they have all the force of law : but the whole law so illustrated by them, must be considered to be contained in the definitions and enacting clauses of the Code.

It has been objected, that if the case given by way of illustration borders upon the verge of the law or does not fall clearly within its terms, it either renders the law doubtful, or the example itself constitutes the law ;—that there may possibly

arise two definitions of the same thing ;—and that inductions and analogies may be drawn from the Illustrations which seem inconsistent with the text of the law. If some latent inconsistency should thus be discovered between the definitions and the Illustrations of the Code, it must be borne in mind, that, although the Illustrations are acts of interpretation by Legislative authority in those precise circumstances which constitute the examples, they cannot be used to alter the law which they are intended to interpret. Legislative like judicial interpretation may be deceptive and under the guise of expounding the text of the law may really add to or alter it ; but the Illustrations must in no case be used to contradict by inference or otherwise the text of the Code. They have the force of a declaratory Law in the very cases supposed ; if the example given falls clearly within the terms of the law, the Illustration is but a needless repetition of what the law has already explicitly enacted ; if the Illustrations are, as it seems they ought to be, cases on the verge of the law, they resemble so many boundary marks to define distinctly the limits of the law in the precise cases put, and by inference in all other cases more unequivocally within the scope of the law. They have no force to contradict or to add to the text of the law.

This Chapter of *General Explanations* (so called to distinguish them from the explanations which follow particular sections of the Code) is a key to the interpretation of the whole Code. The leading terms used are here defined and explained, and the meanings thus announced are steadily adhered to throughout the subsequent chapters.

It cannot be too much impressed on those whose duty it will be to administer this Code that without careful attention to the two chapters of “General Explanations” and “General Exceptions” the full meaning of the other portions of the Code cannot be ascertained. No judicial officer should fail constantly to recur to these chapters to ascertain how they affect the sense of the clause of the Penal Code which he may be about to apply. Until their contents are fixed in his recollection, he will always incur

the risk of overlooking some of the Explanations, Exceptions, and Limitations of these chapters.

It is scarcely necessary to add that this chapter is merely one of explanation. The criminal quality of any act which is described by a word here explained, must depend on the definition in which it occurs. Thus, an effect may be caused "voluntarily" within the meaning of the explanation (Section 39), but it must still depend on the particular definition or penal provision in which the word is used, whether any *offence* has been committed; for the voluntary causing an effect may be made criminal either absolutely or subject to qualifications.

6. Throughout this Code every definition of an offence, every penal provision, and every illustration of every such definition or penal provision, shall be understood subject to the exceptions contained in the Chapter entitled "General Exceptions," though those exceptions are not repeated in such definition, penal provision, or illustration.

Definitions in the Code to be understood subject to exceptions.

Illustrations.

(a) The Sections, in this Code, which contain definitions of offences, do not express that a child under seven years of age cannot commit such offences; but the definitions are to be understood subject to the general exception which provides that nothing shall be an offence which is done by a child under seven years of age.

(b) A, a Police Officer, without warrant, apprehends Z, who has committed murder. Here A is not guilty of the offence of wrongful confinement; for he was bound by law to apprehend Z, and therefore the case falls within the general exception which provides that "nothing is an offence which is done by a person who is bound by law to do it."

There are other exceptions in the chapter referred to in favor of lunatics, of acts done in the exercise of the right of self-defence, of acts done by consent, &c. The present section obviates the necessity of repeating these exceptions several times in each page.

7. Every expression which is explained in any part of this Code, is used in every part of this Code in conformity with the explanation.

Expression once explained is used in the same sense throughout the Code.

8. The pronoun "he" and its derivatives are used of any person, whether male or female.
Gender.
9. Unless the contrary appears from the context, words importing the singular number include the plural number, and words importing the plural number include the singular number.
Number.
10. The word "man" denotes a male human being of any age: the word "woman" denotes a female human being of any age.
"Man."
11. The word "person" includes any Company or Association, or body of persons, whether incorporated or not.
"Person."

That is to say, besides its proper meaning, (a single person,) this word may also mean many persons associated together in such a way that in the eye of the law they become, as it were, one body. If they are thus united by a Legislative Act or by a Royal Charter, the body is incorporated; if the union is by articles of partnership, deed of association, &c., the company or association or partnership, although not incorporated, has a legal existence. In either case the united body may be understood to be included by the word "person."

The word frequently occurs in the Code in a sense in which it is clear from the context that corporate bodies, &c. are not included.

12. The word "public" includes any class of the public or any community.
"Public."
13. The word "Queen" denotes the Sovereign for the time being of the United Kingdom of Great Britain and Ireland.
"Queen."
14. The words "servant of the Queen" denote all officers or servants continued, appointed, or employed in India by or under the authority of the said Statute 21
"Servant of the Queen."

and 22 Vic. c. 106, entitled "An Act for the better Government of India," or by or under the authority of the Government of India or any Government.

15. The words "British India" denote the Territories which are or may become vested in Her Majesty by the said Statute 21 and 22 Vic., c. 106 entitled "an Act for the better Government of India," except the Settlement of Prince of Wales' Island, Singapore and Malacca.

16. The words "Government of India" denote the Governor General of India in Council ; or, during the absence of the Governor General of India from his Council, the President in Council, or the Governor General of India alone, as regards the powers which may be lawfully exercised by them or him respectively.

17. The word "Government" denotes the person or persons authorized by law to administer Executive Government in any part of British India.

18. The word "Presidency" denotes the Territories subject to the Government of a Presidency.

✓ 19. The word "Judge" denotes not only every person who is officially designated as a Judge, but also every person who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive, or who is one of a body of persons, which body of persons is empowered by law to give such a judgment.

Illustrations.

(a) A Collector exercising jurisdiction in a suit under Act X. of 1859, is a Judge.

(b) A Magistrate exercising jurisdiction in respect of a charge on which he has power to sentence to fine or imprisonment, with or without appeal, is a Judge.

(c) A Member of a Panchayet which has power, under Regulation VII. 1816 of the Madras Code, to try and determine suits, is a Judge.

(d) A Magistrate exercising jurisdiction in respect of a charge on which he has power only to commit for trial to another Court, is not a Judge.

In every part of India the judicial administration, the revenue administration, and the police, are so intermingled with each other, that it is not easy to distinguish between them. Many proceedings which in their essential character are judicial are not so in form. If the proceeding is one authorized by law, and the person before whom it is taken is empowered to decide, as stated in the explanation, he is, it seems, "a judge" within its meaning, whatever may be his official designation.

- ✓ 20. The words "Court of Justice" denote a Judge who is empowered by law to act judicially alone, or a body of Judges which is empowered by law to act judicially as a body, when such Judge or body of Judges is acting judicially.

Illustration.

A Panchayet acting under Regulation VII. 1816, of the Madras Code, having power to try and determine suits, is a Court of Justice.

21. The words "public servant" denote a person falling under any of the descriptions hereinafter following, namely:—

First. Every covenanted servant of the Queen ;

Second. Every commissioned officer in the Military or Naval Forces of the Queen while serving under the Government of India or any Government ;

Third. Every Judge ;

Fourth. Every Officer of a Court of Justice whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve

order in the Court ; and every person specially authorized by a Court of Justice to perform any of such duties ;

Fifth. Every Jurymen, assessor, or member of a Panchayet assisting a Court of Justice or public servant ;

Sixth. Every Arbitrator or other person to whom any cause or matter has been referred for decision or report by any Court of Justice, or by any other competent public authority ;

Seventh. Every person who holds any office by virtue of which he is empowered to place or keep any person in confinement ;

Eighth. Every Officer of Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety, or convenience ;

Ninth. Every Officer whose duty it is, as such officer, to take, receive, keep, or expend any property on behalf of Government, or to make any survey, assessment, or contract on behalf of Government, or to execute any revenue process, or to investigate or to report on any matter affecting the pecuniary interests of Government, or to make, authenticate, or keep any document relating to the pecuniary interests of Government, or to prevent the infraction of any law for the protection of the pecuniary interests of Government ; and every officer in the service or pay of Government or remunerated by fees or commission for the performance of any public duty ;

Tenth. Every officer whose duty it is, as such officer, to take, receive, keep, or expend any property, to make any survey or assessment, or to levy any rate or tax for any secular common purpose of any village, town or district, or to make, authenticate, or keep any document for the ascertaining of the rights of the people of any village, town, or district.

Illustration.

A Municipal Commissioner is a public servant.

Explanation 1. Persons falling under any of the above descriptions are public servants, whether appointed by the Government or not.

Explanation 2. Wherever the words "public servant" occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.

A line is drawn between the great mass of the community and certain classes of persons in the service and pay of Government, or exercising various public functions, who are here included under the words "public servant." Those offences which are common between public servants and other members of the community are left to the general provisions of the Code. But there are several offences which can only be committed by public servants: and on the other hand public servants in the discharge of their duties have many privileges peculiar to themselves. This explanation is therefore important with reference to numerous provisions of the Code.

The first explanation and the illustration show that persons who hold offices under local laws, if their duties fall within any of the descriptions here given, are public servants.

According to the second explanation the person who in fact discharges the duties of the office which bring him under some one of the descriptions of "public servant," is for all the purposes of the Penal Code rightfully a public servant, whatever legal defect there may be in his right to hold the office. If he, being to all appearance a public servant, accepts a bribe or is obstructed in the execution of his duty, the penal provisions of the Code are applicable, and he will be punished in the one case and protected in the other, notwithstanding that there may be legal defects in his right to the office. Such defects are not allowed to alter the character of an offence committed by or against him; however much they may affect the validity of his official acts in other respects.

Where the offence concerns any public servant, it is sufficient

to shew "actual possession of the situation," and this is sufficiently shewn by proof that the duties or functions are actually discharged by the person alleged to be such servant.

22. The words "moveable property" are intended
 "Moveable property." to include corporeal property
 of every description, except
 land and things attached to the earth or permanently fastened to any thing which is attached to the earth.

Under the head of immoveable property is included land and things attached to land, that is, things not merely resting by their own weight upon the earth, or temporarily secured to it, but let into or otherwise permanently incorporated with it; for instance, a house the foundation of which is laid in the earth. Things permanently fastened to any thing which is so attached are also included, as the doors, sun-shades, &c., of a house.

All moveable property of every description is included in the words here explained, provided only that it is "corporeal." This word is employed to exclude such property as has no existence, except only in the shape of a claim, or contract, or right to receive money, &c. A man's household furniture is moveable property within this explanation, but when he has sold it, the money due to him by the purchaser is not: nor will the promissory note which he may endorse by way of payment, be so.

Property is the creation of the civil branch of the law, and although this explanation tells us what is not included under the words "moveable property" for the purpose of the Penal Code, we must seek elsewhere to know what things are the subject of property.

23. "Wrongful gain" is gain by unlawful means
 "Wrongful gain." of property to which the person gaining is not legally entitled.

“Wrongful loss” is the loss by unlawful means of property to which the person losing it is legally entitled.

“Wrongful loss.”

A person is said to gain wrongfully when such person retains wrongfully, as well as when such person acquires wrongfully. A person is said to lose wrongfully when such person is wrongfully kept out of any property, as well as when such person is wrongfully deprived of property.

“Wrongful gain” includes wrongful retention of property.

“Wrongful loss” includes the being wrongfully kept out of property.

24. Whoever does any thing with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing “dishonestly.”

“Dishonestly.”

The words explained in this and the last preceding section generally occur in the definitions of offences against property and in the penal provisions connected with such offences. All the violations of the rights of property which the Code makes punishable resemble each other in this, that they cause or have some tendency to cause some person, not to have such dominion over property as he is entitled by law to have. Some of these offences do not merely injure or disturb the enjoyment of property by the rightful owner, but transfer it to one who has no right; causing by means of wrongful loss to the sufferer wrongful gain to some other person. Where there is the intention to cause either the wrongful loss of property to the owner, or the wrongful gain of property to another person, the word “dishonestly” is used; but not where the intention is merely to cause damage or mischief.

25. A person is said to do a thing “fraudulently,” if he does that thing with intent to defraud, but not otherwise.

“Fraudulently.”

The word is used to denote the intention to deceive or cheat. It does not necessarily mean that the thing done is accom-

plished by the use of deceit, artifice, fraud, &c. This word occurs in Sections of the Code which do not always relate to the loss or gain of property.

26. A person is said to have "reason to believe" a thing, if he has sufficient cause to believe that thing, but

"Reason to believe."

not otherwise.

27. When property is in the possession of a person's wife, clerk, or servant, on account of that person, it is in that person's possession within the meaning of this Code.

Property in possession of wife, clerk, or servant.

Explanation. A person employed temporarily or on a particular occasion in the capacity of a clerk or servant, is a clerk or servant within the meaning of this Section.

One term in the definition of theft (see Chapter XVII.) is an intention to take moveable property out of the possession of a person. Here and in other parts of the Penal Code, possession is an important ingredient. It is scarcely possible to mark with precision by any words, the circumstances which constitute possession, although it may be easy to put cases about which no doubt whatever exists. The object of the framers of the Code in this explanation was to lay down a few rules, in accordance with the general sense of mankind, for the purpose of preventing any difference of opinion from arising in cases likely to occur very often. The possession by the clerk or servant of that which belongs to the master, or of that which, whether it belongs absolutely to his master or to another person, the clerk or servant holds for his master and on his account, is the master's possession.

28. A person is said to "counterfeit," who causes one thing to resemble another thing, intending by means of that resemblance to practise deception, or knowing it to be likely that deception will thereby be practised.

"Counterfeit."

Explanation. It is not essential to counterfeiting that the imitation should be exact.

29. The word “document” denotes any matter expressed or described upon any substance by means of letters, figures, or marks, or by more than one of those means, intended to be used, or which may be used, as evidence of that matter.

“Document.”

Explanation 1. It is immaterial by what means or upon what substance the letters, figures, or marks are formed, or whether the evidence is intended for, or may be used in, a Court of Justice, or not.

Illustrations.

A writing expressing the terms of a contract, which may be used as evidence of the contract, is a document.

A Cheque upon a Banker is a document.

A Power of Attorney is a document.

A Map or Plan which is intended to be used or which may be used as evidence, is a document.

A writing containing directions or instructions is a document.

Explanation 2. Whatever is expressed by means of letters, figures, or marks as explained by mercantile or other usage, shall be deemed to be expressed by such letters, figures, or marks within the meaning of this Section, although the same may not be actually expressed.

Illustration.

A writes his name on the back of a Bill of Exchange payable to his order. The meaning of the endorsement, as explained by mercantile usage, is that the Bill is to be paid to the holder. The endorsement is a document, and must be construed in the same manner as if the words “pay to the holder” or words to that effect had been written over the signature.

30. The words “valuable security” denote a document which is, or purports to be, a document whereby any legal right is created, extended, transferred, restricted, extinguished, or released, or whereby any person acknowledges that he lies under legal liability, or has not a certain legal right.

“Valuable security.”

Illustration.

A writes his name on the back of a Bill of Exchange. As the effect of this endorsement is to transfer the right to the Bill to any person who may become the lawful holder of it, the endorsement is a “valuable security.”

These words occur in sections relating to a certain class of offences, not against property directly, but affecting the right to property—(see Chapter XVIII. of offences relating to documents, &c.) The words denote a particular class of documents, viz. : such documents as create or extinguish legal rights.

31. The words “a will” denote any testamentary document.

“A Will.”

32. In every part of this Code, except where a contrary intention appears from the context, words which refer to acts done extend also to illegal omissions.

Words referring to acts include illegal omissions.

The following is an illustration of this provision. By Section 84, nothing is an offence which is done by a person of unsound mind. A, a jailor, goes mad and, in consequence of his madness, omits to supply his prisoners with food. The words of the Section “thing done by a person” apply to A’s omission, and he has committed no offence.

The Code makes punishable omissions which have caused, which have been intended to cause, or which have been known to be likely to cause a certain evil effect in the same manner as it punishes acts ; provided that such omissions were, on other grounds, illegal.* “Illegal” is a word explained by Section 43.

33. The word “act” denotes as well a series of acts as a single act : the word “omission” denotes as well a series of omissions as a single omission.

“Act.”

“Omission.”

34. When a criminal act is done by several persons, each of such persons is liable for that act in the same manner as if the act were done by him alone.

Each of several persons liable for an act done by all, in like manner as if done by him alone.

The actual doers, who are the persons referred to here, are to be distinguished from those who abet the doing of a thing. The law concerning principal actors is contained in this Section

* See the note to Section 299, post.

and in Sections 35 and 37 of this Chapter. What constitutes an abetment is explained in the Chapter of Abetment.

See the notes to Sections 35 and 37.

35. Whenever an act, which is criminal only by reason of its being done with a criminal knowledge or intention, is done by several persons, each of such persons who joins in the act with such knowledge or intention is liable for the act in the same manner as if the act were done by him alone with that knowledge or intention.

When such an act is criminal by reason of its being done with a criminal knowledge or intention.

If several persons, having one and the same criminal intention or knowledge, jointly commit murder or an assault, each is liable for the offence as if he had acted alone: but if several persons join in an act, each having a different intention or knowledge from the others, each is liable according to his own criminal intention or knowledge, and he is not liable further. As if A and B unite in assaulting and resisting C, a public servant, in the execution of his duty; A, not knowing C's character, may be guilty only of an assault: but B, if he knowingly resists C, may commit the offence of obstructing a public servant in the discharge of his public functions.

If an act which is an offence in itself and without reference to any criminal knowledge or intention on the part of the doers is done by several persons, as if several commit a nuisance by carrying on an offensive trade, each of such persons is liable for the offence.

36. Wherever the causing of a certain effect, or an attempt to cause that effect by an act or by an omission, is an offence, it is to be understood that the causing of that effect partly by an act and partly by an omission is the same offence.

Effect caused partly by act and partly by omission.

attempt to cause that effect by an act or by an omission, is an

an act or by an omission, is an

offence, it is to be understood that the causing of that

effect partly by an act and partly by an omission is

the same offence.

Illustration.

A intentionally causes Z's death, partly by illegally omitting to give Z food, and partly by beating Z. A has committed murder.

37. When an offence is committed by means of several acts, whoever intentionally co-operates in the commission of that offence by doing any one of those acts, either singly, or jointly with any other person, commits that offence.

Co-operation by doing one of several acts constituting an offence.

Illustrations.

(a) A and B agree to murder Z by severally and at different times giving him small doses of poison. A and B administer the poison according to the agreement with intent to murder Z. Z dies from the effects of the several doses of poison so administered to him. Here A and B intentionally co-operate in the commission of murder, and as each of them does an act by which the death is caused, they are both guilty of the offence, though their acts are separate.

(b) A and B are joint Jailors, and as such, have the charge of Z, a prisoner, alternately for six hours at a time. A and B, intending to cause Z's death, knowingly co-operate in causing that effect by illegally omitting, each during the time of his attendance, to furnish Z with food supplied to them for that purpose. Z dies of hunger. Both A and B are guilty of the murder of Z.

(c) A, a Jailor, has the charge of Z, a prisoner. A, intending to cause Z's death, illegally omits to supply Z with food; in consequence of which Z is much reduced in strength, but the starvation is not sufficient to cause his death. A is dismissed from his office, and B succeeds him. B, without collusion or co-operation with A, illegally omits to supply Z with food, knowing that he is likely thereby to cause Z's death. Z dies of hunger. B is guilty of murder; but as A did not co-operate with B, A is guilty only of an attempt to commit murder.

We have seen that if several persons combine both in intent and act, each is answerable for the joint criminal act just as if he alone had done it; and so it is if each person has his several part to do, the whole contributing to one result. It is immaterial what particular share is allotted to each, or whether the object be accomplished jointly by all present at the same time and place, or each performs his own part separately. Where all concur in effecting the criminal result, each does the act so far as his own part extends, and, as to the residue, may be regarded as causing it to be done by means of a guilty agent. All the persons concerned, stand in the mutual relation of principals and agents to each other.

38. Where several persons are engaged or concerned in the commission of a criminal act, they may be guilty of different offences by means of that act.

Several persons engaged in the commission of a criminal act may be guilty of different offences.

Illustration.

A attacks Z under such circumstances of grave provocation that his killing of Z would be only culpable homicide not amounting to murder. B, having ill-will towards Z, and intending to kill him, and not having been subject to the provocation, assists A in killing Z. Here, though A and B are both engaged in causing Z's death, B is guilty of murder, and A is guilty only of culpable homicide.

See note to Section 35.

39. A person is said to cause an effect "voluntarily," when he causes it by means whereby he intended to cause it, or by means which, at the time of employing those means, he knew or had reason to believe to be likely to cause it.

"Voluntarily."

Illustration.

A sets fire, by night, to an inhabited house in a large town, for the purpose of facilitating a robbery, and thus causes the death of a person. Here, A may not have intended to cause death, and may even be sorry that death has been caused by his act: yet, if he knew that he was likely to cause death, he has caused death voluntarily.

In general the Code makes no distinction between cases in which a man causes an effect designedly, and cases in which he causes it knowing or having reason to believe that he is likely to cause it. If the effect is a probable consequence of the means used by him, he causes it "voluntarily" whether he really meant to cause it or not. He is not allowed to urge that he did not know or was not sure that the consequence would follow; but he must answer for it just as if he had intended to cause it.* The English law by means of an artificial pre-

* Upon the subject of "Wilful Injuries" the English Criminal Law Commissioners say, "We have included within the predicament of *wilful* offenders not only such as directly intend to inflict a particular injury, but also all such as wilfully and knowingly incur the hazard of causing it." In further explanation of this use of the term *wilful*, they remark (and the remark is equally applicable to the explanation contained in the above section of the Penal Code) that "the proper test of guilt in such cases is that of knowledge and consciousness on the part

sumption, viz., that a man is presumed to intend the natural or probable consequences of his own act, gives to words which denote intention, the meaning here annexed to "voluntarily."

40. The word "offence" denotes a thing made punishable by this Code.

"Offence."

"Intending to facilitate the commission of an offence," &c., "knowing that an offence has been committed," &c., "an assembly of five persons for the purpose of committing an offence:" In construing these and similar expressions, this explanation must be borne in mind. The word denotes only those acts which the Code punishes.

41. A "special law" is a law applicable to a particular subject.

"Special Law."

Act XVII. of 1854 (for the management of the Post Office)
Act XVIII. of 1854, (relating to railways in India) Act XXXII. of 1854, (relating to embankments) are instances. So also, it

of the malefactor that hurt or damage is likely to result or will probably result, from what he does; his criminality consists in the wilfully incurring the risk of causing loss or suffering to others. The case of a party so misconducting himself, and so regardless of the interest of others, seems to be undistinguishable in point of legal guilt and penal consequences from that of a criminal who acts with the most direct intention to execute an illegal purpose, and it seems to us that he may properly be described as the voluntary author of the mischief produced. The principle of exemption from criminal responsibility in respect of a hurtful consequence is that of *bonâ fide* ignorance of the connexion existing between the mere mechanical act and its consequence. That principle ceases to operate where the connexion is known to be either certain or probable. If the doer of an act know or believe that a noxious consequence will result from that act, he is just as culpable both in law and morals, as if he had acted with the most direct intention to hurt. Let it, however, be supposed that the consequence is not certain, but that it is a likely or probable consequence, and that the likelihood or probability is known to the doer of the act. Here again it is clear that the principle of exemption abovementioned is unavailable to exempt the offender from liability in respect of the consequence. All he can urge is, that he was not sure that the hurtful consequence would follow; but he had no right to incur the risk and danger of producing the mischief, and having done so, he is justly responsible for it; he cannot reasonably complain that the Law did not give him notice of the penalty annexed to the offence, or that he did not wilfully offend, for the Law may justly, after due notification, doom such an offender to the penalties inflicted on those who accomplish their purposes by more certain or direct means; the safety of society is inconsistent with any distinction in this respect, and the offender in truth acted wilfully, in wilfully incurring the risk and danger of causing the injurious result." 7th Report of the Criminal Law Commissioners.

seems, are the laws relating to the various branches of the public revenue, as Customs, Opium, Stamps, &c.

42. A "local law" is a law applicable only to a particular part of British India.
- "Local law."

Act XIII. of 1856 (for regulating the police of the Towns of Calcutta, Madras, &c.,) Act XX. of 1859, (for the suppression of outrages in Malabar) are instances. The laws of a Presidency, or of a Lieutenant Governorship, or of a Province, as the laws of the Presidency of Fort St. George, of the Punjaub, of Oude, &c., are not local laws.

The laws administered by the Supreme Courts to British subjects and others are not special or local laws.

43. The word "illegal" is applicable to every thing which is an offence or which is prohibited by law, or which furnishes ground for a civil action: and a person is said to be "legally bound to do" whatever it is illegal in him to omit.
- "Illegal."
"Legally bound to do."

44. The word "injury" denotes any harm whatever, illegally caused to any person, in body, mind, reputation, or property.
- "Injury."

The harm must be "*illegally*" caused. It often happens that the lawful exercise of a right causes detriment to some person; but this harm is not "injury." An act which is by law wrongful as regards the person complaining, that is, which affects him prejudicially in some legal right, is an "injury."

45. The word "life" denotes the life of a human being, unless the contrary appears from the context.
- "Life."

46. The word "death" denotes the death of a human being, unless the contrary appears from the context.
- "Death."

47. The word "animal" denotes any living creature, other than a human being.
 "Animal."

48. The word "vessel" denotes any thing made for the conveyance by water of human beings, or of property.
 "Vessel."

49. Wherever the word "year" or the word "month" is used, it is to be understood that the year or the month is to be reckoned according to the British Calendar.
 "Year."

50. The word "section" denotes one of those portions of a Chapter of this Code which are distinguished by prefixed numeral figures.
 "Section."

51. The word "oath" includes a solemn affirmation substituted by law for an oath, and any declaration required or authorized by law to be made before a public servant or to be used for the purpose of proof, whether in a Court of Justice or not.
 "Oath."

52. Nothing is said to be done or believed in good faith, which is done or believed without due care and attention.
 "Good faith."

What is done by a person who in *good faith* believes himself to be bound to do it, or what is done in *good faith* for a man's benefit, though in fact it causes harm to him, is not an offence. Sections 76 and 88.

This explanation of good faith shews in what sense the above and other similar clauses are to be understood. Mere good faith in the sense of simple belief, actual belief, without any grounds for believing, is not sufficient: the belief must be a reasonable not an absurd belief, that is, there must be some reasonable ground for it. Good faith in act or belief requires due care and attention to the matter in hand. The law cannot mark, except in this vague way, the amount of care and atten-

tion requisite; but if a man takes upon himself an office or duty requiring skill or care, and a question arises whether he has acted therein in good faith, he must shew not merely a good intention, but such care and skill as the duty reasonably demands for its due discharge. The degree of care requisite will vary with the degree of danger which may result from the want of care. Where the peril is the greatest the greatest caution is necessary.

Simple belief may negative malice and is a strong argument against any criminal intention, but where the question is whether a Magistrate or other public servant is justified in doing a certain thing, his justification must have a better foundation than his mere private belief; for a man may be very foolish in believing himself justified, and the law could not adopt so vague and unsafe a criterion.

CHAPTER III.

OF PUNISHMENTS.

The punishments provided for offences by this Code are contained in this Chapter; but the mode of inflicting, commuting, and remitting punishments belongs to the law of procedure.

The power to grant pardons and reprieves and remissions of punishments is regulated by Act XVIII. of 1855.

53. The punishments to which offenders are liable under the provisions of this Code are—

Punishments.

- First*,—Death;
- Secondly*,—Transportation;
- Thirdly*,—Penal servitude;
- Fourthly*,—Imprisonment, which is of two descriptions, namely:—
 - (1.) Rigorous, that is, with hard labour;
 - (2.) Simple;

Fifthly,—Forfeiture of property ;

Sixthly,—Fine.

There are several sections in the Code in which offences are referred to as a class according to their punishments, e. g. “abetting the commission of an offence punishable with transportation for life ;” or “with imprisonment which may extend to ten years,” &c. It may be useful to give the following classified list of punishments with the numbers of the Sections containing the offences to which such punishments are annexed.

Death may be awarded in all cases of murder—including the abetment of suicide of a child under eighteen years of age, of a person of unsound mind, or of one who is intoxicated,—and including also the case of murder in dacoity (which makes every member of the gang liable to the punishment of murder, although the actual offence was committed by only one of the party) (Sections 302, 303, 305, 396). And it is the *only* punishment when the murder is committed by a life-convict (Section 303). Death also may be awarded for waging war, &c. against the Queen (Section 121),—for abetting mutiny, when the mutiny is in consequence committed (Section 132),—and for giving or fabricating false evidence by means of which an innocent person is convicted *and executed* (Section 194).

Transportation for life may be substituted for death, in all the capital cases, except that of murder by a life-convict. And transportation for life, or *imprisonment for ten years*, may be substituted for death in the case of the abetment of mutiny (Section 132),—the procuring by false evidence the execution of an innocent person (Section 194),—the abetment of the suicide of a child, or of an insane or intoxicated person (Section 305),—and murder committed by a gang of dacoits (Section 396). There are only two offences for which the punishment of transportation for life *must* be awarded : the unlawful return from transportation (Section 226), and the being a Thug (Section 311). In all other cases,—all cases except those already mentioned,—some less

punishment is provided by the Code, which may be awarded at the discretion of the Court.

The following are the sections in which transportation for life occurs, either as the only punishment, or as one of the punishments assigned : Sections 75, 121, 122, 125, 128, 130, 131, 132, 194, 222, 225, 226, 238, 255, 302, 304, 305, 307, 311, 313, 314, 326, 329, 364, 371, 376, 377, 388, 389, 394, 395, 396, 400, 409, 412, 413, 436, 438, 449, 459, 460, 467, 472, 474, 475, 477.

The Code, in no instance, specifically provides transportation for any term short of life, as a punishment. But there is a general provision contained in Section 59 to the effect that when an offender is punishable with imprisonment for seven years or more, the Court may, instead of awarding sentence of imprisonment, sentence the offender to transportation for a term not less than seven years, and not exceeding that for which the offender is, under the Code, liable to be imprisoned. There is no precise rule fixing the term of transportation to be awarded in such cases, except that it can never be less than seven years, or longer than the term for which the offender might be imprisoned.

Fourteen years is the longest period to which *Imprisonment* ever extends. In two instances the minimum of imprisonment is seven years (Sections 397, 398) ; in no other case is any minimum fixed. The following statement gives the Sections in which are specified the various offences which are punishable with imprisonment for terms of years, or shorter periods.

Imprisonment which may extend to fourteen years.

Sections 115 of Chapter V. (Abetment).

Sections 222 of Chapter XI. (False Evidence, &c.)

Sections 392, 457 and 458 of Chapter XVII. (Offences against Property).

Imprisonment which may extend to ten years.

Section 119 of Chapter V. (Abetment).

Sections 122, 123 and 128 of Chapter VI. (Offences against the State).

Sections 131 and 132 of Chapter VII. (Offences relating to the Army and Navy).

Sections 194 and 225 of Chapter XI. (False Evidence &c).

Sections 232, 235, 238, 240, 251 and 255 of Chapter XII. (Offences relating to Coin &c.).

Sections 304—307, 313—316, 326—329, 331, 333, 364, 366, 367, 371—373, 376 and 377 of Chapter XVI. (Offences affecting the Human Body).

Sections 382, 386, 388, 389, 392, 394—396, 399, 400, 409, 412, 413, 436—439, 449, 450, 454, 455, 459 and 460 of Chapter XVII. (Offences against Property).

Section 467 of Chapter XVIII. (Offences relating to Documents &c).

Sections 493 and 495 of Chapter XX. (Offences relating to Marriage).

Imprisonment which may extend to ten years and shall not be less than seven years.

Sections 397 and 398 of Chapter XVII. (Offences against Property).

Imprisonment which may extend to seven years.

Sections 115 and 118 of Chapter V. (Abetment).

Sections 124—127 of Chapter VI. (Offences against the State).

Section 134 of Chapter VII. (Offences relating to the Army and Navy).

Sections 193, 195, 201, 211, 213, 214, 216, 219—222, 225 of Chapter XI. (False Evidence &c.).

Sections 231, 234, 243—245, 247, 249, 256—260, of Chapter XII. (Offences relating to Coin, &c.).

Section 281 of Chapter XIV. (Offences affecting the Public Health, Safety, &c.).

Sections 308, 312, 317, 325, 330, 363, 365, 369, 370, of Chapter XVI. (Offences affecting the Human Body).

Sections 380, 381, 387, 393, 401, 402, 404, 407, 408, 420, 433, 435, 451, 452, of Chapter XVII. (Offences against Property).

Sections 466, 468, 472—477 of Chapter XVIII. (Offences relating to Documents, &c.).

Sections 494 and 496 of Chapter XX. (Offences relating to Marriage).

Section 506 of Chapter XXII. (Criminal Intimidation, &c.).

Imprisonment which may extend to five years.

Section 212, of Chapter XI. (False Evidence, &c.).

Sections 239, 250 and 253 of Chapter XII. (Offences relating to Coin, &c.).

Sections 429—432, 440, 457, of Chapter VII. (Offences against Property).

Section 497 of Chapter XX. (Offences relating to Marriage).

Imprisonment which may extend to four years.

Section 335 of Chapter XVI. (Offences affecting the Human Body).

Imprisonment which may extend to three years.

Sections 117 and 118 of Chapter V. (Abetment).

Section 129 of Chapter VI. (Offences against the State).

Section 133 of Chapter VII. (Offences relating to the Army and Navy).

Sections 148 and 152 of Chapter VIII. (Offences against the Public Tranquillity).

Sections 162, 164 and 167 of Chapter IX. (Offences relating to Public Servants).

Section 181 of Chapter X. (Contempts of the lawful authority of Public Servants).

Sections 193, 201, 205, 212—214, 216, 218, 221, 222, and 225 of Chapter XI. (False Evidence, &c.).

Sections 233, 235, 237, 242, 246, 248, 252, 261, 263 of Chapter XII. (Offences relating to Coin, &c.).
Sections 308, 312, 324, 332, 344, 347, 348 of Chapter XVI. (Offences affecting the Human Body).
Sections 379, 384, 404, 406, 411, 414, 418, 419, 454, 456, 462 of Chapter XVII. (Offences against Property).
Sections 469, 484, 485, 487 of Chapter XVIII. (Offences relating to Documents, &c.).

Imprisonment which may extend to two years.

Sections 135 and 136 of Chapter VII. (Offences relating to the Army and Navy).
Sections 144, 145, 147, 158 of Chapter VIII. (Offences against the Public Tranquillity).
Sections 165, 169, 170 of Chapter IX. (Offences relating to Public Servants).
Sections 177 and 189 of Chapter X. (Contempts of the lawful authority of Public Servants).
Sections 203, 204, 206—211, 215, 217, 221, 223—225, 229 of Chapter XI. (False Evidence, &c.).
Sections 241, 254, 262 of Chapter XII. (Offences relating to Coin, &c.).
Section 270 of Chapter XIV. (Offences affecting the Public Health, Safety, &c.).
Section 295 of Chapter XV. (Offences relating to Religion).
Sections 318, 338, 343, 345, 346, 353—356 of Chapter XVI. (Offences affecting the Human Body).
Sections 385, 403, 421—424, 427, 428, 451, 453, 461 of Chapter XVII. (Offences against Property).
Sections 465 and 483 of Chapter XVIII. (Offences relating to Documents, &c.).
Section 498 of Chapter XX. (Offences relating to Marriage).
Sections 500—502 of Chapter XXI. (Defamation).

Sections 504—507 of Chapter XXII. (Criminal Intimidation, &c.)

Imprisonment which may extend to one year.

Section 153 of Chapter VIII. (Offences against the Public Tranquillity).

Sections 163, 166 and 168 of Chapter IX. (Offences by or relating to Public Servants).

Section 190 of Chapter X. (Contempts of the lawful authority of Public Servants).

Sections 264—267 of Chapter XIII. (Offences relating to Weights and Measures).

Sections 296—298 of Chapter XV. (Offences relating to Religion).

Sections 309, 323, 342, 357 and 374 of Chapter XVI. (Offences affecting the Human Body).

Sections 417, 434 and 448 of Chapter XVII. (Offences against Property).

Sections 482, 486 and 489 of Chapter XVIII. (Offences relating to Documents, &c.).

Sections 508 and 509 of Chapter XXII. (Criminal Intimidation, &c.).

Imprisonment which may extend to six months.

Section 138 of Chapter VII. (Offences relating to the Army and Navy).

Sections 143, 151, 153 and 158, of Chapter VIII. (Offences against the Public Tranquillity).

Sections 172—179, 182, 183, 187 and 188 of Chapter X. (Contempts of the lawful authority of Public Servants).

Sections 202 and 228 of Chapter XI. (False Evidence, &c.).

Sections 269, 271—276, 279, 280, 282, 284—289 and 291 of Chapter XIV. (Offences affecting the Public Health, Safety, &c.).

Section 337 of Chapter XVI. (Offences affecting the Human Body).

Imprisonment which may extend to three months.

Section 140 of Chapter VII. (Offences relating to the Army and Navy).

Section 171 of Chapter IX. (Offences by or relating to Public Servants).

Sections 180 and 186 of Chapter X. (Contempts of the lawful authority of Public Servants).

Sections 277, 292—294 of Chapter XIV. (Offences affecting the Public Health, Safety, &c.).

Sections 336 and 352 of Chapter XVI. (Offences affecting the Human Body).

Sections 426 and 447 of Chapter XVII. (Offences against Property).

Section 491 of Chapter XIX. (Criminal Breach of Contracts of Service).

Imprisonment which may extend to one month.

Section 160 of Chapter VIII. (Offences against the Public Tranquillity).

Sections 172—176, 184, 185, 187, 188 of Chapter X. (Contempts of the lawful authority of Public Servants).

Sections 334, 341, 358 of Chapter XVI. (Offences affecting the Human Body).

Sections 490 and 492 of Chapter XIX. (Criminal Breach of Contracts of Service).

Imprisonment which may extend to twenty-four hours.

Section 510 of Chapter XXII. (Criminal Intimidation, &c.)

Imprisonment is either *Rigorous* or *Simple*. It is *rigorous* in the case of the offences specified in Sections 194, 226, 364, 382, 392—396, 399—402, 412 and 449. It is *simple* in those referred to in Sections 129, 163, 165, 166, 168, 169, 172—180, 187, 228, 291, 309, 358, 500—502, 509, 510. In all other instances it is either rigorous or simple, or partly rigorous and

partly simple (Section 60), at the discretion of the Court. And whenever the Court has power to sentence to rigorous imprisonment, it may order that the offender be kept in solitary confinement during a certain portion of his imprisonment (Sections 73, 74).

The *Forfeiture of all property* is a punishment to which all offenders are liable who are guilty of any offence punishable with death (Section 62), or who are guilty of waging, or preparing, or attempting to wage, or abetting the waging of, war against the Queen (Section 121, 122). In the former instance it is at the discretion of the Court to adjudge or not that the forfeiture shall take place: in the latter (Sections 121, 122) the forfeiture of all property is an essential part of the punishment, and the Court has no discretion in the matter.

The *rents and profits (accruing during the period of his transportation or imprisonment) of the whole estate moveable and immoveable* of a person convicted of any offence for which he shall be transported, or sentenced to imprisonment, for seven years or upwards, may be forfeited to Government (Section 62). But in such cases, the order of forfeiture is made subject to such provision for the family and dependents of the offender, as the Government may think fit to allow.

The sections relating to the forfeiture of *specific property* are three (Sections 126, 127, 169). When offenders commit or prepare to commit depredation on the territories of any power at peace with the Queen, forfeiture of any property used or intended to be used, in committing such depredation, or acquired by such depredation, may be added as a punishment (Section 126). So also in the case of property received with the knowledge that it has been taken in waging war, or committing depredation, on a power at peace with the Queen (Section 127). And confiscation or forfeiture of the property purchased by him, is part of the punishment provided for a public officer who buys property when he ought not to do so (Section 169).

In almost every Penal Section throughout the Code, *Fine* is either prescribed positively as the punishment, or is authorised

as an alternative or as an additional punishment. The following table shews the cases in which fine is the *only* punishment, and what is the limit of fine in such cases. In two of these instances the amount of fine is unlimited.

Fine, when it is the *only* punishment,—

- (a) when unlimited in amount, Sections 155, 156.
- (b) when limited to 1000 Rs. Section 154.
- (c) 500 Rs. Sections 137, 278.
- (d) 200 Rs. Sections 283, 290.

In about 140 cases in which some other specified punishment *must* also be awarded by the Court, fine may be inflicted as an *additional* punishment: in all these cases there is no limit to the amount of the fine, which is left to the discretion of the Court. In one instance (Section 254) fine is prescribed as an *alternative* punishment, the amount being proportioned to the value of the subject of the offence, and the Court having power to sentence either to imprisonment or to fine, but not to both. In the annexed table will be found in detail the cases in which fine may be inflicted as an *additional punishment only*; and also the cases in which it may be inflicted at the discretion of the Court either as an *alternative punishment*, or as an *additional punishment*,—that is to say, in which it is left to the discretion of the Court to sentence the offender either only to some punishment other than fine, or to such other punishment together with fine, or to fine only. In some of the cases of the latter class, it will be observed that the amount of the fine is limited.

Fine, as an *additional* punishment, unlimited in amount :

Sections 115, 118, 123, 124, 126—134, 181, 193, 194, 201, 209, 211—214, 216, 221, 222, 225, 226, 231—235, 237—240, 242—253, 255—259, 302, 304—307, 309, 311—314, 316, 325—331, 333, 344, 347, 348, 363—367, 369—373, 376, 377, 380—382, 386—389, 392—396, 399 —402, 404, 407—409, 412, 413, 420, 435—440, 449—460, 466—469, 472—477, 484, 493—496.

Fine, as an *alternative* punishment, or as an *additional* punishment :

(a) when unlimited in amount,

Sections 116, 117, 125, 135, 136, 138, 143—145, 147, 148, 151—153, 157, 158, 162—170, 177, 189, 190, 201—208, 210—220, 222—225, 229, 260—267, 269, 270, 271, 281, 291—298, 304, 308, 315, 317, 318, 324, 332, 343, 353—356, 374, 379, 384, 385, 403, 406, 411, 414, 417—419, 421—424, 426—434, 461, 462, 465, 482, 483, 485—487, 489, 497, 498, 500—502, 504—506, 508, 509, 511,

(b) when limited to 2000 Rs. Section 335.

(c) when limited to 1000 Rs.

Sections 172—179, 182, 183, 188, 228, 272—276, 279, 280, 282, 284—289, 323, 338, 342, 357, 448.

(d) when limited to 500 Rs.

Sections 140, 172—176, 180, 184, 186, 187, 277, 334, 337, 341, 352, 447.

(e) when limited to 250 Rs. Section 336.

(f) when limited to 200 Rs.

Sections 171, 185, 187, 188, 358, 491.

(g) when limited to 100 Rs. Sections 160, 490.

(h) when limited to 10 Rs. Section 510.

subject ?) (i) when proportioned to the value of the subject of the offence, Sections 241, 492.

54. In every case in which sentence of death shall have been passed, the Government of India or the Government of the place within which the offender shall have been sentenced may, without the consent of the offender, commute the punishment for any other punishment provided by this Code.

55. In every case in which sentence of transportation for life shall have been passed, the Government of India or the Government of the place within which

the offender shall have been sentenced may, without the consent of the offender, commute the punishment for imprisonment of either description for a term not exceeding fourteen years.

56. Whenever any person being a European or American is convicted of an offence punishable under this Code with transportation, the Court shall sentence the offender to penal servitude instead of transportation, according to the provisions of Act XXIV of 1855.

57. In calculating fractions of terms of punishment, transportation for life shall be reckoned as equivalent to transportation for twenty years.

58. In every case in which a sentence of transportation is passed, the offender, until he is transported, shall be dealt with in the same manner as if sentenced to rigorous imprisonment, and shall be held to have been undergoing his sentence of transportation during the term of his imprisonment.

According to Act XXXV. of 1860 the Court will not in the sentence specify the place of transportation. The Supreme Government appoints a place or places of transportation within the British Territories; and the local Governments give orders for the removal of persons sentenced to transportation to the places so appointed.

59. In every case in which an offender is punishable with imprisonment for a term of seven years or upwards, it shall be competent to the Court which sentences such offender, instead of awarding sentence of imprisonment, to sentence the offender to transportation for a term not less than seven years, and not exceeding the term for which by this Code such offender is liable to imprisonment.

60. In every case in which an offender is punishable with imprisonment which may be of either description, it shall be competent to the Court which sentences such offender to direct in the sentence that such imprisonment shall be wholly rigorous, or that such imprisonment shall be wholly simple, or that any part of such imprisonment shall be rigorous and the rest simple.

Sentence may be (in certain cases) of imprisonment, wholly or partly rigorous or simple.

61. In every case in which a person is convicted of an offence for which he is liable to forfeiture of all his property, the offender shall be incapable of acquiring any property except for the benefit of Government until he shall have undergone the punishment awarded, or the punishment to which it shall have been commuted, or until he shall have been pardoned.

Sentence of forfeiture of property.

Illustration.

A, being convicted of waging war against the Government of India, is liable to forfeiture of all his property. After the sentence, and whilst the same is in force, A's father dies, leaving an estate which, but for the forfeiture, would become the property of A. The estate becomes the property of Government.

The convict continues capable of acquiring property, but he holds it, when acquired, for the benefit of Government only. Having undergone his sentence or received a remission of it, the capacity to acquire and hold property for his own benefit returns to him. But whether he has received a pardon or worked out his sentence, he never can have any right to the property which under this Section is taken from him, but only to subsequently acquired property.

62. Whenever any person is convicted of an offence punishable with death, the Court may adjudge that all his property, moveable and immoveable, shall be forfeited to Government; and whenever any person shall be convicted of any offence for which he shall be transported or sentenced to im-

Forfeiture of property in respect of offenders punishable with death, transportation, or imprisonment.

prisonment for a term of seven years or upwards, the Court may adjudge that the rents and profits of all his moveable and immoveable estate during the period of his transportation or imprisonment, shall be forfeited to Government, subject to such provision for his family and dependents as the Government may think fit to allow during such period.

In certain specified instances (Sections 121, 122,) the forfeiture of the offender's property *necessarily* follows the conviction. But forfeiture under this Section rests with the Court and must be adjudged as part of the sentence.

The eight following Sections relate to punishment by fine. The framers of the Code, in a note to this Chapter, observe that,

“ Fine is one of the most common punishments in every part of the world, and it is a punishment, the advantages of which are so great and obvious, that we propose to authorise the Courts to inflict it in every case, except where forfeiture of all property is necessarily part of the punishment. Yet the punishment of fine is open to some objections. Death, imprisonment, transportation, banishment, solitude, compelled labour, are not, indeed, equally disagreeable to all men. But they are so disagreeable to all men that the legislature, in assigning those punishments to offences, may safely neglect the differences produced by temper and situation. With fine the case is different. In imposing a fine, it is always necessary to have as much regard to the pecuniary circumstances of the offender, as to the character and magnitude of the offence. The mulct which is ruinous to a labourer is easily borne by a tradesman, and is absolutely unfelt by a rich Zemindar.

“ It is impossible to fix any limit to the amount of a fine which will not either be so high as to be ruinous to the poor, or so low as to be no object of terror to the rich. There are many millions in India who would be utterly unable to pay a fine of fifty rupees ; there are hundreds of thousands from whom such

a fine might be levied, but whom it would reduce to extreme distress; there are thousands to whom it would give very little uneasiness; there are hundreds to whom it would be a matter of perfect indifference, and who would not cross a room to avoid it. The number of the poor in every country exceeds in a very great ratio the number of the rich. The number of poor criminals exceeds the number of rich criminals in a still greater ratio. And to the poor criminal it is a matter of absolute indifference whether the fine to which he is liable be limited or not, unless it be so limited as to render it quite inefficient as a mode of punishing the rich. To a man who has no capital, who has laid by nothing, whose monthly wages are just sufficient to provide himself and his family with their monthly rice, it matters not whether the fine for assault be left to be settled by the discretion of the Courts, or whether a hundred rupees be fixed as the maximum. There are no degrees in impossibility. He is no more able to pay a hundred rupees than to pay a lac. A just and wise judge, even if entrusted with a boundless discretion, will not, under ordinary circumstances, sentence such an offender to a fine of a hundred rupees. And the limit of a hundred rupees would leave it quite in the power of an unjust or inconsiderate judge to inflict on such an offender all the evil which can be inflicted on him by means of fine."

63. Where no sum is expressed to which a fine may extend, the amount of fine to which the offender is liable is unlimited, but shall not be excessive.

Amount of fine.

The difficulty of framing any general rule for the limiting of fine has always been felt. The rule here laid down, that excessive fines shall not be imposed, follows the words of the Bill of Rights (1 Will. and Mary. St. 2. C. 2.) In cases which are not very heinous, the amount of fine which the Courts may impose is, as has been shewn above, limited by the Code; but in serious cases the amount is left to their discretion.

64. In every case in which an offender is sentenced to a fine, it shall be competent to the Court which sentences such offender to direct by the sentence that, in default of payment of the fine, the offender shall suffer imprisonment for a certain term, which imprisonment shall be in excess of any other imprisonment to which he may have been sentenced or to which he may be liable under a commutation of a sentence.

This and the following Sections provide for the course to be adopted in default of payment of fine. An offender who has been sentenced to fine must be considered as a debtor, and as a debtor not entitled to any peculiar lenity. If a temporary imprisonment for debt ought not to cancel the claim of the private creditor, neither ought a temporary imprisonment in default of payment of a fine to cancel the claims of public justice. To sentence an offender to fine, and to a certain fixed term of imprisonment in default of payment, and then to leave it to himself to determine whether he will part with his money or lie in jail, appears very objectionable. If offenders are allowed to choose between imprisonment and fine, fine will lose almost its whole efficacy, and will never be inflicted on those who dread it most. To prevent this result the Code makes the following provision:—At the time of imposing a fine, the Court may fix a certain term of imprisonment which the offender shall undergo in default of payment: but the Court may further at any time either before or after he has undergone this additional imprisonment, levy the fine from the property of the offender. (Section 70.) In fixing the term of imprisonment to be undergone in default of paying a fine, the Court must in no case exceed a certain maximum, which will vary according to the nature of the offence. If the offence be one which is punishable with imprisonment as well as fine, the term of imprisonment in default of payment will not exceed one-fourth of the longest term of imprisonment fixed by the Code for the offence. If the

offence be one which, by the Code, is punishable only with fine, the term of imprisonment for default of payment will be according to the scale given in Section 67.

65. The term for which the Court directs the offender to be imprisoned in default of payment of a fine, shall not exceed one-fourth of the term of imprisonment which is the maximum fixed for the offence, if the offence be punishable with imprisonment as well as fine.

66. The imprisonment which the Court imposes in default of payment of a fine may be of any description to which the offender might have been sentenced for the offence.

67. If the offence be punishable with fine only, the term for which the Court directs the offender to be imprisoned, in default of payment of fine, shall not exceed the following scale, that is to say; for any term not exceeding two months when the amount of the fine shall not exceed fifty Rupees, and for any term not exceeding four months when the amount shall not exceed one hundred Rupees, and for any term not exceeding six months in any other case.

68. The imprisonment which is imposed in default of payment of a fine shall terminate whenever that fine is either paid or levied by process of law.

This imprisonment is not to be taken in full satisfaction of the fine. The offender is not permitted to choose whether he will suffer in his person or in his property. His person will indeed cease to be answerable when he has undergone the imprisonment awarded to him: but his property will for a

time continue liable. At any time during six years the fine may be levied on his effects.

The process of law for the levy of fines, and the power to award pecuniary compensation to persons injured by offences, are not provided by this Code. The laws now in force, or such provisions on these subjects as may be contained in the new law of criminal procedure, should be consulted.

69. If, before the expiration of the term of imprisonment fixed in default of payment, such a proportion of the fine be paid or levied that the term of imprisonment suffered in default of payment is not less than proportional to the part of the fine still unpaid, the imprisonment shall terminate.

Termination of such imprisonment upon payment of proportional part of fine.

Illustration.

A is sentenced to a fine of one hundred Rupees, and to four months imprisonment in default of payment. Here, if seventy-five Rupees of the fine be paid or levied before the expiration of one month of the imprisonment, A will be discharged as soon as the first month has expired. If seventy-five Rupees be paid or levied at the time of the expiration of the first month, or at any later time while A continues in imprisonment, A will be immediately discharged. If fifty Rupees of the fine be paid or levied before the expiration of two months of the imprisonment, A will be discharged as soon as the two months are completed. If fifty Rupees be paid or levied at the time of expiration of those two months, or at any later time while A continues in imprisonment, A will be immediately discharged.

70. The fine, or any part thereof which remains unpaid, may be levied at any time within six years after the passing of the sentence, and if, under the sentence, the offender be liable to imprisonment for a longer period than six years, then at any time previous to the expiration of that period; and the death of the offender does not discharge from the liability any property which would, after his death, be legally liable for his debts.

Fine may be levied within six years or at any time during the term of imprisonment.

Death of offender not to discharge his property from liability.

71. Where anything which is an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment of more than one of such his offences, unless it be so expressly provided.

Limit of punishment of offence which is made up of several offences.

Illustration.

(a) A gives Z fifty strokes with a stick. Here A may have committed the offence of voluntarily causing hurt to Z by the whole beating, and also by each of the blows which make up the whole beating. If A were liable to punishment for every blow, he might be imprisoned for fifty years, one for each blow. But he is liable only to one punishment for the whole beating.

(b) But if, while A is beating Z, Y interferes, and A intentionally strikes Y, here, as the blow given to Y is no part of the act whereby A voluntarily causes hurt to Z, A is liable to one punishment for voluntarily causing hurt to Z, and to another for the blow given to Y.

72. In all cases in which judgment is given that a person is guilty of one of several offences specified in the judgment, but that it is doubtful of which of these offences he is guilty, the offender shall be punished for the offence for which the lowest punishment is provided, if the same punishment is not provided for all.

Punishment of a person found guilty of one of several offences, the judgment stating that it is doubtful of which.

This provision is intended to prevent an offender whose guilt is fully established from eluding punishment on the ground that the evidence does not enable the tribunals to pronounce with certainty under what penal provision his case falls. The details of the law on this subject will be contained in the Code of Criminal Procedure, but the provision which directs the punishment in such cases, belongs to the Penal Code.

Whether the doubt is merely between an aggravated and mitigated form of the same offence, or between two offences neither of which is a mitigated form of the other, the offender, must be punished for the offence to which the lowest punishment is annexed. If the same punishment is provided for each of the offences, the offender is of course liable to that punishment. As, for example, if it is certain that either A or B murdered Z,

and that whichever was the murderer, was aided by the other in the commission of the murder,—but which committed the murder, and which aided the commission, it is impossible to ascertain,—the punishment of both these offences is the same, and therefore both A and B are liable to that punishment.

It is chiefly in cases where property has been fraudulently appropriated that the necessity for this Section will be felt. This provision will obviate all the inconveniences which might arise from doubts as to the exact limits which separate theft from misappropriation and from breach of trust. If a case which is plainly theft comes before the judges, the offender will be punished as a thief. If a case which is plainly breach of trust comes before them, the offender will be punished as guilty of breach of trust. If they have to try a case which lies on the frontier,—one of those thefts which are hardly distinguishable from breaches of trust, or one of those breaches of trust which are hardly distinguishable from theft,—they will not trouble themselves with subtle distinctions, but leaving it undetermined by which name the offence should be called, will proceed to determine what is of infinitely greater importance, namely what shall be the punishment.

This mode of procedure or punishment should only be resorted to in cases in which it is impossible to ascertain the specific offence committed by a person who clearly has participated in or is guilty of some offence. The main facts which constitute the body of such offence are proved, and the doubt relates to some incidental point which is of a quality important only as determining whether the offence falls technically under one designation or another. Without determining this point, the Court convicts the offender in the alternative, and sentences him to a punishment equally warrantable whether the offence were (ex. gr.) theft or breach of trust.

73. Whenever any person is convicted of an offence for which under this Code the Court has power to sentence him to rigorous imprisonment, the Court may, by

Solitary confinement.

its sentence, order that the offender shall be kept in solitary confinement for any portion or portions of the imprisonment to which he is sentenced, not exceeding three months in the whole, according to the following scale, that is to say :—

A time not exceeding one month if the term of imprisonment shall not exceed six months.

A time not exceeding two months if the term of imprisonment shall exceed six months and be less than a year.

A time not exceeding three months if the term of imprisonment shall exceed one year.

74. In executing a sentence of solitary confinement, such confinement shall in no case exceed fourteen days at a time, with intervals between the periods of solitary confinement of not less duration than such periods; and when the imprisonment awarded shall exceed three months, the solitary confinement shall not exceed seven days in any one month of the whole imprisonment awarded, with intervals between the periods of solitary confinement of not less duration than such periods.

75. Whoever having been convicted of an offence punishable under Chapter XII. or Chapter XVII. of this Code with imprisonment of either description for a term of three years or upwards, shall be guilty of any offence punishable under either of those Chapters with imprisonment of either description for a term of three years or upwards, shall be subject for every such subsequent offence to transportation for life or to double the amount of punishment to which he would otherwise have been liable for the same; provided that he shall not in any case be liable to imprisonment for a term exceeding ten years.

The offences referred to are offences relating to Coin and Government Stamps, and the more serious offences against pro-

party. It will be observed that it is not necessary that the punishment actually awarded for the first offence should have been imprisonment for three years : it is sufficient if the offence be one made punishable with imprisonment for that term or any heavier punishment.

And both convictions must be of offences punishable under this Code and therefore committed after it comes in force.

CHAPTER IV.

GENERAL EXCEPTIONS.

This Chapter obviates the necessity of repeating in every penal clause a considerable number of limitations.

Such exceptions as relate only to a single provision or to a very small class of provisions will be found appended to the Sections which they modify ; but such exceptions as are common to the whole Code, or to a great variety of clauses dispersed over many chapters, are placed separately in this Chapter ; and, to prevent the frequent repetition of these exceptions elsewhere, it is provided (Section 6) that every definition of an offence, every penal provision, and every illustration, shall be construed subject to the provisions contained in this Chapter.

Those by whom this law will be administered must bear in mind that nothing is an offence,—that is, a thing made punishable by this Code,—when it is brought within any of these General Exceptions. The detailed rules for guiding criminal trials belong to the Code of Criminal Procedure. But it may be noticed here that it is for the accused person who relies upon a general exception to bring it forward by way of defence ; and that those who prosecute are not bound in the first

instance to allege or to prove that the case does not come within any of these exceptions.*

Many of these grounds of defence may require the Judge to decide a perplexing question, namely what was passing in the mind of the accused person at the time of the commission of the alleged offence. The accused cannot of course prove directly what was in his mind, but he may be able to prove facts by which this may be made sufficiently manifest.

76. Nothing is an offence which is done by a person who is, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be, bound by law to do it.

Illustrations.

(a) A, a soldier, fires on a mob by the order of his superior officer, in conformity with the commands of the law. A has committed no offence.

(b) A, an officer of a Court of Justice, being ordered by that Court to arrest Y, and, after due enquiry, believing Z to be Y, arrests Z. A has committed no offence.

What a person is bound by law to do is not an offence ; and what a person thinks he is bound by law to do is not an offence, if he has formed this opinion carefully, (see Section 52,) notwithstanding that he may have mistaken facts. Ignorance or mistake of fact and ignorance or mistake of law are not placed on the same footing, since law may be and ought to be com-

* The Code of Criminal Procedure, lately revised by the Legislative Council and republished for general information, contains provisions to the following effect on this subject.

It shall not be necessary to allege in the charge that the case does not come within any of the General Exceptions contained in Chapter IV. of the Penal Code.

It shall not be necessary at the trial, on the part of the prosecutor to prove in the first instance the absence of circumstances showing that none of the General Exceptions are applicable ; but the accused person shall be entitled to give evidence of the existence of any such circumstances, and evidence in disproof thereof may be given on the part of the prosecutor.

But where the Chapter and Section itself referred to in the charge contains an exception not being one of such General Exceptions the charge shall not be understood to assume the absence of circumstances constituting this exception without distinct denial of such circumstances. Sections 165, 166, 167.

prised within certain limits, while the interpretation of facts deceives even the most prudent. It would be mischievous to allow an accused person to set up as a defence his own mistaken belief respecting some legal obligation. But there is great difference between doing a thing in ignorance of its being forbidden by law, and doing a thing in consequence of an honest and sincere belief that to leave it undone would be disobedience to the law ; and in awarding punishment this difference should be allowed due weight.

77. Nothing is an offence which is done by a Judge
Act of Judge when acting judicially. when acting judicially in the exercise of any power which is, or which in good faith he believes to be, given to him by law.

One who serves in a judicial capacity is required to exercise a judgment of his own ; and as his duty obliges him to decide all questions of law and fact which are submitted for his judgment, he is not punishable for error or mistake whether of fact or of law. This large exemption is conferred on him when acting judicially, not only in those cases in which he proceeds irregularly in the exercise of a power which the law gives to him, but also in cases where he in good faith exceeds his jurisdiction and has no lawful powers. See the explanations of " Judge " and of " good faith."

It will sometimes be difficult to say whether a thing is within this exception as having been done by a *Judge acting judicially*. Thus a Collector has various duties of which some are clearly judicial, others clearly not. He is a Judge when exercising jurisdiction in a suit under Act X. of 1859 ; he is not a Judge when making a settlement. Under laws like Act VI. of 1857 (*for the acquisition of land for public purposes*) he exercises functions some of which are ministerial and others judicial ; and in such cases all his proceedings will not be within this exception, although some may be.

It seems that this exception applies to the omissions as well as to the acts of Judicial Officers, as if a judge should erroneously decline to exercise a jurisdiction which he really possesses.

78. Nothing which is done in pursuance of, or which is warranted by, the judgment or order of a Court of Justice, if done whilst such judgment or order remains in force, is an offence, notwithstanding the Court may have had no jurisdiction to pass such judgment or order, provided the person doing the act, in good faith, believes that the Court had such jurisdiction.

The ministerial officers of Courts of Justice and other persons are protected by this Section against criminal liability for what they do in execution of the orders or decrees of the Judge. It is the duty of such persons ordinarily not to question or dispute judicial orders but to obey them so long as they remain in force. Unless it is known that a judgment or order is a mere nullity for want of jurisdiction in the Court which makes it, those who act under it are protected. Any error or mistake whether of fact or of law in executing the judgment or order may also be deemed to be protected by this Section.

79. Nothing is an offence which is done by any person who is justified by law, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be justified by law in doing it.

Act done by a person justified, or by mistake of fact believing himself justified by law.

Illustration.

A sees Z commit what appears to A to be a murder. A, in the exercise, to the best of his judgment, exerted in good faith, of the power which the law gives to all persons of apprehending murderers in the fact, seizes Z, in order to bring Z before the proper authorities. A has committed no offence, though it may turn out that Z was acting in self-defence.

What the law justifies is no offence; and what a person in good faith believes that the law justifies him in doing is not an offence, although his belief may be founded on a mistake of facts.

The protection of this Section is, it seems, given only where there is some law or colour of law to justify what is done; it extends not to things the doing of which, though not prohibited by any law, cannot be said to be justified.

80. Nothing is an offence which is done by accident or misfortune and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means and with proper care and caution.

Illustration.

A is at work with a hatchet; the head flies off and kills a man who is standing by. Here, if there was no want of proper caution on the part of A, his act is excusable and not an offence.

This illustration supposes a case in which an effect is caused by means which were not intended or known to be likely to cause it. The event happens by accident and without the concurrence of the will of the person who causes it. If the will concurs in causing the effect, but this concurrence arises from some erroneous impression on the mind, it is the same,—as if A shoot an innocent but unknown man, believing him to be a robber of whose attempt he has been apprised.

To punish as offences things thus done by accident or misfortune, would commonly be to add to the sufferings of an innocent man, the penalties intended for the guilty. And this, without adding anything to the security of human life or property, since no punishment inflicted on the unfortunate can prevent the recurrence of accidents and misfortunes.

The exception requires that “proper care and caution” should be used. Generally in the common affairs of life that degree of attention and care which a man of ordinary prudence and activity employs in his daily occupations is “proper care and caution;” and extraordinary circumspection and diligence

are not required. But if a man takes upon himself an office or duty requiring skill, he must be competent to what he undertakes. Thus a person, whether a medical man or not, who deals with the life or health of another, having no skill or knowledge of medicine to justify him, cannot be said to use proper care and caution.

The nature of the thing done and the time and place of doing it, must be considered. If a man in building or repairing a house throws a stone from it into the street or way and causes death or hurt,—if he do this in a street where many persons are passing, he will not be protected, unless he can show that he acted with great caution and gave warning beforehand to the passers-by ; but if he do it in a retired place where there was no probability of persons passing by, and none had been seen about the spot before, it seems that he acts with sufficient caution and therefore commits no offence.

The exception requires that the act done shall not only be lawful in itself, but shall be done in a lawful manner by lawful means. Parents and masters may lawfully administer reasonable correction to children under their care, but if a child is flogged immoderately or with an improper instrument, and death or hurt ensues, the present exception will not protect the offender.

The expression “ a lawful act ” probably means an act lawful by the general laws of the land. There are many acts in themselves indifferent which, for reasons of convenience or policy, are forbidden to be done at certain times or in certain places. Thus within the Presidency Towns, the Police and Conservancy laws make many harmless things unlawful. A person who is in all other respects entitled to the benefit of this exception, would seem not to be deprived of it, because his act is not *lawful* within the meaning of such laws.

81. Nothing is an offence merely by reason of its being done with the knowledge that it is likely to cause harm, if it be done without

Act likely to cause harm but done without a criminal intent and to prevent other harm.

any criminal intention to cause harm, and in good faith for the purpose of preventing or avoiding other harm to person or property.

Explanation.—It is a question of fact in such a case whether the harm to be prevented or avoided was of such a nature and so imminent as to justify or excuse the risk of doing the act with the knowledge that it was likely to cause harm.

Illustrations.

(a) A, the Captain of a Steam Vessel, suddenly and without any fault or negligence on his part, finds himself in such a position that, before he can stop his vessel, he must inevitably run down a boat B, with 20 or 30 passengers on board, unless he changes the course of his vessel, and that, by changing his course, he must incur risk of running down a boat C with only 2 passengers on board, which he may possibly clear. Here, if A alters his course without any intention to run down the boat C and in good faith for the purpose of avoiding the danger to the passengers in the boat B, he is not guilty of an offence, though he may run down the boat C by doing an act which he knew was likely to cause that effect, if it be found as a matter of fact that the danger which he intended to avoid was such as to excuse him in incurring the risk of running down C.

(b) A in a great fire pulls down houses in order to prevent the conflagration from spreading. He does this with the intention in good faith of saving human life or property. Here, if it be found that the harm to be prevented was of such a nature and so imminent as to excuse A's act, A is not guilty of the offence.

82. Nothing is an offence which is done by a child

Act of a child under 7 years of age. under seven years of age.

83. Nothing is an offence which is done by a child

Act of a child above 7 and under 12 years of age, who has not sufficient maturity of understanding. above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.

Nothing is made punishable by this Code which is done by a child. For although a child may be conscious of an act done, its understanding does not reach to the consciousness of that act being an offence; and criminality depends not upon the consciousness of an act but upon the knowledge of its quality.

The present exception does not extend to those children between the ages of 7 and 12 years who are able to understand the nature and consequences of their conduct. It belongs rather to the law of procedure than to this Code to determine what shall be the course of proof upon the trial of a child above 7 years of age : but it seems that the age of the accused being once established, and the case so far brought within the exception, the Court cannot convict, until the prosecution has proved such maturity of understanding as makes the accused criminally responsible in the particular case. The degree of proof to be required may depend on the age ; for there is a wide difference between the cases of two children, one of whom is a day short of twelve, and the other a day over seven years old.

In some offences, immaturity of body—a want of physical capacity to do an act—may exempt children from criminal responsibility. See Section 375.

84. Nothing is an offence which is done by a person
 Act of a person of unsound mind. who, at the time of doing it,
 by reason of unsoundness of
 mind, is incapable of knowing the nature of the act,
 or that he is doing what is either wrong or contrary
 to law.*

* The English Judges, with one exception, in answer to a question put to them by the House of Lords in 1844, as to the terms in which the question respecting the prisoner's state of mind at the time when the act was committed, ought to be proposed to the jury, stated—"The jury ought to be told in all cases that every man is presumed to be sane, and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary be proved to their satisfaction ; and that to establish a defence on the ground of insanity, it must be clearly proved that, at the time of the committing of the act, the party accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing ; *or if he did know it, that he did not know he was doing what was wrong.*"

With reference to this latter part of the question to be proposed to the jury, the Judges remark, "The mode of putting it has generally been whether the accused, at the time of doing the act, knew the difference between right and wrong ; which mode, though rarely, if ever, leading to any mistake with the jury, is not as we conceive so accurate when put generally, and in the abstract, as when put with reference to the party's knowledge of right and wrong, in respect to the very act with which he is charged."

They add, "If the question were to be put as to the knowledge of the accused, solely and exclusively with reference to the law of the land, it might tend to confound the jury, by inducing them to believe that an actual knowledge of the law of

Whether the want of capacity is temporary or permanent, natural or supervening, whether it arises from disease or exists from the time of birth, it is included in the expression "unsoundness of mind." Thus an idiot who is a person without understanding from his birth, a lunatic who has intervals of reason, and a person who is mad or delirious, are all persons of "unsound mind."

There are numerous degrees of insanity. It has been said that not every little cloud floating over an otherwise enlightened understanding will exempt from criminal responsibility; nor on the other hand, will every glimmering of reason over the darkness of a troubled mind, subject the unfortunate being to the heavy pains provided for wilful wrong-doing. According to the Code, unsoundness of mind, to make a man irresponsible, must reach that degree which is described in the latter part of this General Exception.

An idiot or lunatic, even if he is conscious of his act, has not capacity to know its nature and quality, and is therefore not responsible. Madmen, especially those under the influence of some delusion, may have capacity enough to know the nature of the act, but unless they also know that they are doing "what is either wrong or contrary to law," they are not responsible. A common instance is, where a man fully believes that the act he is doing (e. g. killing another man) is done by the immediate command of God: he acts under the delusive belief that what he is doing is by the command of a superior power which supersedes all human laws. Again, a person under an insane delusion as to existing facts, supposes another man to be in the act of taking away his life, and he kills that man, as he believes in self-defence:—he is not responsible. But if his delusion was, that the deceased had inflicted some injury on

the land was essential in order to lead to conviction; whereas the law is administered upon the principle that every one must be taken conclusively to know it, without proof that he does know it. If the accused were conscious that the act was one which he ought not to do, and if that act was at the same time contrary to the law of the land, he is punishable."

him or had caused the death of his relations, &c. and he killed him in revenge for such supposed injury, he would be liable to punishment.

As to the knowledge that what is done is "either wrong or contrary to law," it must be remembered that the law is administered upon the principle that every one knows it, as he is bound to know it. The question in each case must be, whether the accused person was in a state to know the nature of the act and its criminal character as against the law (which he is bound to know) of the land,—or, what is in substance the same, whether he was conscious of doing what he ought not to do. The inquiry must be directed to the particular thing done and not to any other, because a man may be responsible for some things, and not for others. Of course also it has reference to the time of the transaction, and not to any other time. But to ascertain the state of the mind at that particular time, its condition both before and after may be inquired into.

It is understood in science, and it has sometimes been recognized in law, that a person may be conscious of what he is doing, may know the moral, legal, and natural consequences of his act, and yet may be impelled to do the thing by a power which he cannot resist. This Code, however, does not appear to admit of any such excuse as homicidal mania, or an irresistible impulse to destroy life.

Insanity is usually relied on by way of defence in charges of murder, and of offences against the person. In offences against property such as theft, cheating, &c., which often require some art and skill for their completion, and argue a sense of the advantage of acquiring other people's property, this defence must be received, as indeed it should in all cases be received, with the utmost caution.

85. Nothing is an offence which is done by a person who, at the time of doing it, is, by reason of intoxication, incapable of knowing the na-

Act of a person incapable of judgment by reason of intoxication caused against his will.

ture of the act, or that he is doing what is either wrong, or contrary to law; provided that the thing which intoxicated him was administered to him without his knowledge or against his will.

Voluntary drunkenness is not an excuse for crime. But if a man is made drunk through stratagem or the fraud of others, or through ignorance, (as if a doctor should administer a drug being ignorant of its intoxicating power,) or through any other means causing intoxication without the man's knowledge or against his will, he is excused. He is excused if his intoxication reaches such a degree as to make him, like an insane person, incapable of knowing the nature and criminality of his act.

Many men,—it is said, especially soldiers who have been severely wounded in the head,—well know that the immediate consequence of drinking to intoxication is to bring on a state of temporary insanity. Such persons seem to be criminally responsible, as much as those who take an intoxicating drug or spirit to stimulate their courage to commit a crime.

If habitual drunkenness has created a fixed insanity whether permanent or intermittent, as for instance, *delirium tremens*, it is the same as if insanity had been produced by any other cause and the act is excused:

86. In cases where an act done is not an offence

Offence requiring a particular intent or knowledge committed by one who is intoxicated.

unless done with a particular knowledge or intent, a person who does the act in a state of intoxication shall be liable to be dealt with, as if he had the same knowledge as he would have had, if he had not been intoxicated, unless the thing which intoxicated him was administered to him without his knowledge or against his will.

A certain guilty knowledge or intention forms part of the definitions of many offences.

Voluntary drunkenness in such cases is no excuse. The accused must be deemed to have the same *knowledge* as he would

have had if sober ; but it seems that his intoxication may be taken into account as throwing light on the question of intention.

87. Nothing which is not intended to cause death, or grievous hurt, and which is not known by the doer to be likely to cause death, or grievous hurt, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, to any person above eighteen years of age, who has given consent, whether express or implied, to suffer that harm ; or by reason of any harm which it may be known by the doer to be likely to cause to any such person who has consented to take the risk of that harm.

Illustration.

A and Z agree to fence with each other for amusement. This agreement implies the consent of each to suffer any harm which, in the course of such fencing, may be caused without foul play ; and if A, while playing fairly, hurts Z, A commits no offence.

Generally speaking every man is free to inflict any suffering or damage he chooses on his own person and property ; and if instead of doing this himself, he consents to its being done by another, the doer commits no offence. A man may give away his property ; and so, another who takes it by his permission does not commit theft. He may inflict self-torture, or he may consent to suffer torture at the hands of another. But the law, as declared by this exception does not permit him to give his consent to anything intended or known to be likely to cause his own death or grievous hurt. See Section 88.

Nor can, of course, any consent of his extend to make lawful an act which is an offence independently of the harm which it may cause to him. A, the owner of a house, may consent that B shall burn it ; but his consent to suffer this harm will not excuse B for any hurt or injury which may thereby be done to persons asleep in the house or in adjacent houses.

In a large class of offences, such as offences against the public peace, morals, health, &c., this exception therefore cannot have any operation. As to the consent, see Section 90.

88. Nothing, which is not intended to cause death, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to any person for whose benefit it is done in good faith, and who has given a consent, whether express or implied, to suffer that harm, or to take the risk of that harm.

Act not intended to cause death, done by consent in good faith for the benefit of a person.

Illustration.

A, a surgeon, knowing that a particular operation is likely to cause the death of Z, who suffers under a painful complaint, but not intending to cause Z's death and intending, in good faith, Z's benefit, performs that operation on Z, with Z's consent. A has committed no offence.

No consent can justify an intentional causing of death. But a person *for whose benefit* a thing is done, may consent that another shall do that thing, even if death may probably ensue. It is often the wisest thing that a man can do to expose his life to great hazard. It is often the greatest service that can be rendered to him to do what may very probably cause his death. He may labour under a cruel and wasting malady which is certain to shorten his life, and which renders his life, while it lasts, useless to others and a torment to himself. Suppose, that under these circumstances, he gives his free and intelligent consent to take the risk of an operation which in a large proportion of cases has proved fatal, but which is the only method by which his disease can possibly be cured, and which, if it succeeds, will restore him to health and vigor; the person, who with due care and skill, performs the operation, commits no offence.

Again, if a person attacked by a wild beast should call out to his friends to fire, though with imminent hazard to himself, and they were to obey the call, they would commit no offence though by firing they might cause his death, and though when

they fired they knew themselves to be likely to cause his death.

See the explanations of “good faith” (Section 52), “benefit” (Section 92, *Explanation*), “consent” (Section 90).

89. Nothing which is done in good faith for the benefit of a person under twelve years of age, or of unsound mind, by or by consent, either express or implied, of the guardian or other person having lawful charge of that person, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to that person : Provided—

First. That this exception shall not extend to the intentional causing of death, or to the attempting to cause death ;

Secondly. That this exception shall not extend to the doing of any thing which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt ; or the curing of any grievous disease or infirmity ;

Thirdly. That this exception shall not extend to the voluntary causing of grievous hurt, or to the attempting to cause grievous hurt, unless it be for the purpose of preventing death or grievous hurt, or the curing of any grievous disease or infirmity ;

Fourthly. That this exception shall not extend to the abetment of any offence, to the committing of which offence it would not extend.

Illustration.

A, in good faith, for his child's benefit, without his child's consent, has his child cut for the stone by a surgeon, knowing it to be likely that the operation will cause the child's death, but not intending to cause the child's death. A is within the exception, inasmuch as his object was the cure of the child.

A child may meet with an accident which may render the amputation of a limb necessary : or a lunatic may be in a state which makes it proper that he should be put into a strait waistcoat. This Section provides that the consent of the guar-

dian shall, to a great extent, have the effect which the consent of the sufferer himself would have, if the sufferer were of ripe age and sound mind.

But because there is considerable danger in allowing people to assume the office of judging for others in such cases, some restrictions are imposed on the guardian's power to consent, besides the requisites of good faith and benefit to the sufferer. Every man always intends in good faith his own benefit, and has a deeper interest in knowing what is for his own benefit than any body else can have. Therefore that he gives a free and intelligent consent to suffer pain or loss, creates a strong presumption that it is good for him on the whole to suffer that pain or loss. But the interest of his neighbours is not to be confided to him in the same unreserved manner in which we confide to him his own, even when he sincerely intends to benefit his neighbours. For even parents have been known to deliver their children up to slavery in a foreign country, to inflict the most cruel mutilations on their male children, to sacrifice the chastity of their female children, and to do all this declaring, and perhaps with truth, that their object was something which they considered as advantageous to the children. For these reasons where the consent required is that of some one other than the individual himself, some thing more than mere good faith and the benefit of the sufferer are by this Section made necessary.

The effect of this exception, and of the limitations which the proviso attaches to it, is further shown by the following illustrations—

A, a parent whips his child moderately for the child's benefit, A has committed no offence.

A confines his child, for the child's benefit, A has committed no offence.

A in good faith for his daughter's benefit, intentionally kills her to prevent her from falling into the hands of a band of robbers and murderers, who are about to attack his house. A is not within the exception.

90. A consent is not such a consent as is intended by any Section of this Code, Consent known to be given under fear or misconception. if the consent is given by a person under fear of injury or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception—Or

If the consent is given by a person who from Consent of a child or person of unsound mind. unsoundness of mind or intoxication is unable to understand the nature and consequence of that to which he gives his consent; or, unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age.

A free and intelligent consent must be given. Fear of injury or mistake of fact are not consistent with such a consent. Suppose an ignorant person to represent himself as having skill to perform a difficult operation, and by this pretence to obtain consent to perform it, such consent can avail him nothing. But where the facts which invalidate a consent are unknown to the person to whom it is given, as if other persons without his knowledge represent that he possesses medical skill and thus obtain consent to his administering a potent medicine, &c., this will not make the consent invalid.

This Section is rather a General Explanation than a General Exception.

91. The exceptions in Sections 87, 88, and 89, do Acts which are offences independently of harm caused to the person consenting, are not within the exceptions in Sections 87, 88, and 89. not extend to acts which are offences independently of any harm which they may cause, or be intended to cause or be known to be likely to cause, to the person giving the consent, or on whose behalf the consent is given.

Illustration.

Causing miscarriage (unless caused in good faith for the purpose of saving the life of the woman) is an offence independently of any harm which it may cause or be intended to cause to the woman. Therefore it is not an offence "by reason of such harm;" and the consent of

the woman or of her guardian to the causing of such miscarriage does not justify the act.

92. Nothing is an offence by reason of any harm which it may cause to a person for whose benefit it is done in good faith, even without that person's consent, if the circumstances are such that it is impossible for that person to signify consent, or if that person is incapable of giving consent, and has no guardian or other person in lawful charge of him from whom it is possible to obtain consent in time for the thing to be done with benefit. Provided—

Provisoes.

First. That this exception shall not extend to the intentional causing of death, or the attempting to cause death.

Secondly. That this exception shall not extend to the doing of any thing which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt or the curing of any grievous disease or infirmity.

Thirdly. That this exception shall not extend to the voluntary causing of hurt, or to the attempting to cause hurt, for any purpose other than the preventing of death or hurt.

Fourthly. That this exception shall not extend to the abetment of any offence, to the committing of which offence it would not extend.

Illustrations.

(a) Z is thrown from his horse, and is insensible. A, a surgeon, finds that Z requires to be trepanned. A, not intending Z's death, but in good faith, for Z's benefit, performs the trepan before Z recovers his power of judging for himself. A has committed no offence.

(b) Z is carried off by a tiger. A fires at the tiger knowing it to be likely that the shot may kill Z, but not intending to kill Z, and in good faith intending Z's benefit. A's ball gives Z a mortal wound. A has committed no offence.

(c) A, a Surgeon, sees a child suffer an accident which is likely to prove fatal unless an operation be immediately performed. There is not time to apply to the child's guardian. A performs the operation in spite of the entreaties of the child, intending, in good faith, the child's benefit. A has committed no offence.

(d) A is in a house which is on fire, with Z, a child. People below hold out a blanket. A drops the child from the house-top, knowing it to be likely that the fall may kill the child, but not intending to kill the child, and intending, in good faith, the child's benefit. Here, even if the child is killed by the fall, A has committed no offence.

Explanation.—Mere pecuniary benefit is not benefit within the meaning of Sections 88, 89, and 92.

In these examples there is what may be called a temporary guardianship justified by the exigency of the case and by the humanity of the motive. This Section extends to acts done in the exercise of this temporary guardianship a protection very similar to that given by Section 89 to the acts of regular guardians.

93. No communication made in good faith is an offence by reason of any harm to the person to whom it is made, if it be made for the benefit of that person.

Communication made in good faith.

Illustration.

A, a Surgeon, in good faith, communicates to a patient his opinion that he cannot live. The patient dies in consequence of the shock. A has committed no offence, though he knew it to be likely that the communication might cause the patient's death.

94. Except murder and offences against the State punishable with death, nothing is an offence which is done by a person who is compelled to do it by threats, which, at the time of doing it, reasonably cause the apprehension that instant death to that person will otherwise be the consequence; provided the person doing the act did not of his own accord, or from a reasonable apprehension of harm to himself short of instant death, place himself in the situation by which he became subject to such constraint.

Explanation 1.—A person who, of his own accord, or by reason of a threat of being beaten, joins a gang of dacoits, knowing their character, is not entitled to the benefit of this exception, on the ground of his

having been compelled by his associates to do any thing that is an offence by law.

Explanation 2.—A person seized by a gang of dacoits, and forced, by threat of instant death, to do a thing which is an offence by law, for example, a smith compelled to take his tools and to force the door of a house for the dacoits to enter and plunder it, is entitled to the benefit of this exception.

The law says that a man ought rather to die himself than escape death by the murder of an innocent person or by committing an offence against the State. But for all offences except murder and offences against the State, it is sufficient excuse that the act was done by compulsion of other persons and to save the life of the doer threatened by them.

The operation of this Section is shown by the explanations (or illustrations as they rather seem) appended to it.

The Section does not apply to acts which a man does of his own accord to save his life; as causing the death of others by jumping from a sinking ship into an over-loaded boat; nor to acts which a man is compelled by force to do as if A by force takes the hand of B in which is a weapon, and kills C with it. It would be cruel and useless to punish such acts which are done without any criminal intention, and in the case last supposed without the concurrence of the will.

Suppose a person seized by a band of rioters and forced by threat of instant death to join them, commits or takes part in the commission of an offence. If he seeks to excuse his subsequent acts under this exception, he must show a duress continuing up to the time of the commission of the act.

No exception will be found in this Code to exempt from punishment married women who commit offences. The English law presumes as to some offences that when a wife commits them in her husband's presence, she is not a free agent but acts by coercion; and she is therefore excused from punishment. When she acts from such compulsion as this Section deems sufficient to excuse, a married woman in common with other

persons will be excused, but this Code gives her no further exemption.

95. Nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm.

The framers of the Code thus explain this Section. "The Section is intended to provide for those cases which, though, from the imperfections of language, they fall within the letter of the penal law, are yet not within its spirit, and are all over the world considered by the public, and for the most part dealt with by the tribunals, as innocent. There are innumerable acts without performing which, men cannot live together in society, acts which all men constantly do and suffer in turn and which it is desirable that they should do and suffer in turn, yet which differ only in degree from crimes. That these acts ought not to be treated as crimes is evident, and we think it far better expressly to except them from the penal clauses of the Code than to leave it to the judges to except them in practice. For if the Code is silent on the subject, the judges can except these cases only by resorting to one of two practices which we consider as most pernicious, by making law, or by wresting the language of the law from its plain meaning."

OF THE RIGHT OF PRIVATE DEFENCE.

By this important exception many acts otherwise criminal are saved from the operation of the penal clauses of the Code.

The right of private defence which existed before police and public tribunals, still continues to exist, although its exercise is restricted within the limits appointed by law. This right arises to every man on a reasonable apprehension of danger to himself or others, when the protection of the law and its officers

cannot be obtained. It exists for the defence not only of his own person and property, but also of the persons and properties of others, and it extends to causing death in some cases and harm in others. As the right is founded not upon any idea of retributive justice but of preventive, police it cannot extend to the inflicting of more harm than is necessary for the purpose of defence.

Those Sections which determine the precise extent to which this right may be carried in various cases, should be administered, in a sense not unfavourable to the free exercise of the right. A man suddenly exposed to the fear and danger of an assault cannot predict the extent of injury about to be inflicted on him. Not only is the right generally called into exercise suddenly, but often the person using it is one who cannot be supposed to have a very accurate knowledge of the restrictions which the written law has imposed on its exercise.

This right of private defence instead of being in any way adverse to the principal ends of law rather promotes those ends. If I kill a murderer in self-defence, it answers the purpose of the punishment which the law inflicts upon murderers, and it also accomplishes a purpose which punishment is too tardy to reach. The death inflicted on the aggressor tends, as his punishment would tend, to deter from the commission of murder; and it also prevents, what his punishment would not prevent, the completion of the murderer's design in the particular instance.

96. Nothing is an offence which is done in the exercise of the right of private defence.

Nothing done in private defence is an offence.

97. Every person has a right, subject to the restrictions contained in Section 99, to defend—

Right of private defence of the body and of property.

Firstly. His own body, and the body of any other person, against any offence affecting the human body;

Secondly. The property, whether moveable or im-

moveable, of himself or of any other person, against any act which is an offence falling under the definition of theft, robbery, mischief, or criminal trespass, or which is an attempt to commit theft, robbery, mischief, or criminal trespass.

Offences against the person, and such offences against property as are, or probably may be, accompanied by force as distinct from mere fraud, are meant.

98. When an act, which would otherwise be a certain offence is not that offence by reason of the youth, the want of maturity of understanding, the unsoundness of mind, or the intoxication of the person doing that act, or by reason of any misconception on the part of that person, every person has the same right of private defence against that act which he would have if the act were that offence.

Right of private defence
against the act of a person of
unsound mind, &c.

Illustrations.

(a) Z, under the influence of madness, attempts to kill A. Z is guilty of no offence. But A has the same right of private defence which he would have if Z were sane.

(b) A enters by night a house which he is legally entitled to enter. Z, in good faith, taking A for a house-breaker, attacks A. Here Z, by attacking A under this misconception, commits no offence. But A has the same right of private defence against Z, which he would have if Z were not acting under that misconception.

This right of defence arises from the natural right of self-protection, and not from any supposed criminality on the part of the person who causes the danger. Although he may be blameless, or an insane person incapable of committing an offence, I am no more bound to suffer what he attempts to inflict, than I should be if he had a criminal intention. Of course, if the right is exercised against a woman or a child, it must not exceed the moderate bounds which, in such a case, will ordinarily be sufficient.

99. *First.* There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by a public servant acting in good faith under colour of his office, though that act may not be strictly justifiable by law.

Second. There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by the direction of a public servant acting in good faith under colour of his office, though that direction may not be strictly justifiable by law.

Third. There is no right of private defence in cases in which there is time to have recourse to the protection of the public authorities.

Fourth. The right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence.

Explanation 1.—A person is not deprived of the right of private defence against an act done, or attempted to be done, by a public servant, as such, unless he knows, or has reason to believe, that the person doing the act is such public servant.

Explanation 2.—A person is not deprived of the right of private defence against an act done, or attempted to be done, by the direction of a public servant, unless he knows, or has reason to believe, that the person doing the act is acting by such direction, or unless such person states the authority under which he acts, or, if he has authority in writing, unless he produces such authority, if demanded.

Ministerial officers of justice and other public servants are protected by the law in the discharge of their duties, and if questions arise touching any trivial excess or irregularity committed by them or by their orders in good faith, such questions must be determined by the civil tribunals. The risk to public

servants would be extreme if any departure from the strict letter of their authority justified resistance to them. The expressions "under colour of his office" and "in good faith" show that the protection is intended to be given only to a public servant acting honestly in discharge of powers conferred or of duties imposed on him.

The right of private defence does not arise when recourse may be had to the public authorities. For this right does not take the place of the functions of those public servants who are especially charged with the protection of life and property and the apprehension of offenders; and where the assistance of the public authorities can be procured, the right cannot lawfully be exercised. A more definite rule may be desirable, but the subject appears not to admit of a certain rule. A man may from many circumstances of suspicion foresee a danger and have a reasonable apprehension of its approach; and yet recourse under the circumstances to the public authorities for protection might be deemed uncalled for. Clause 3 of Section 99 appears to contemplate such cases as those in which a threatened danger (e. g. an attack by clubmen, &c.) is premeditated and may be foreseen.

As the right is given for protection and not for punishment, the limitation of the right to the inflicting only such harm as is necessary for the purpose of defence is proper.

Explanations 1 and 2.—The Code of Criminal Procedure will probably be found to contain rules for the guidance of officers of justice and persons who act by their direction.

Actual knowledge that a person is a public servant, or acting by direction of a public servant, or reasonable ground of knowledge, as from his dress, words, weapons, &c. will deprive those against whom he acts of the right of self-defence. On this subject it is laid down in an English work of authority (Foster's Crown Law) that—"With regard to those ministers of justice who in right of their offices are conservators of the peace, and in that right alone interpose in the case of riots or affrays, it is necessary, in order to make the offence of killing

them amount to murder, that the parties concerned should have some notice with what intent they interpose; otherwise the persons engaged may in the heat and bustle of an affray imagine, that they came to take a part in it. But in these cases a small matter will amount to a due notification. It is sufficient, if the peace be commanded, or the officer in any other manner declare with what intent he interposeth. Or if the officer be within his proper district, and known or but generally acknowledged to bear the office he assumeth, the law will presume that the party killing had due notice of his intent, specially if it be in the day time. In the night some further notification is necessary, and commanding the peace, or using words of the like import notifying his business, will be sufficient.

“I remember a saying of a very learned judge, that a constable’s staff will not make a constable. This is very true. But if a minister of justice be present at a riot or affray within his district, and, in order to keep the peace, produce his staff of office or any other known ensign of authority: this, I conceive, will be a sufficient notification with what intent he interposeth.”

100. The right of private defence of the body extends, under the restrictions mentioned in the last preceding Section, to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, namely—

When the right of private defence of the body extends to causing death.

First. Such an assault, as may reasonably cause the apprehension that death will otherwise be the consequence of such assault;

Secondly. Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault;

Thirdly. An assault with the intention of committing rape;

Fourthly. An assault with the intention of gratifying unnatural lust;

Fifthly. An assault with the intention of kidnapping or abducting ;

Sixthly. An assault with the intention of wrongfully confining a person, under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release.

Certain aggravated assaults which are here enumerated justify the exercise of the right of private defence to the extent of causing death (if this be necessary). The reference to the restrictions in the preceding Section should probably be understood to apply to the restrictions therein mentioned exclusive of those in the first and second clauses, as to which this reference is inapplicable.

101. If the offence be not of any of the descriptions enumerated in the last preceding Section, the right of private defence of the body does not extend to the voluntary causing of death to the assailant, but does extend, under the restrictions mentioned in Section 99, to the voluntary causing to the assailant of any harm other than death.

102. The right of private defence of the body commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence, though the offence may not have been committed ; and it continues as long as such apprehension of danger to the body continues.

There must be an attempt or threat, and consequent thereon an apprehension of danger ; but it is not a mere idle threat, or every apprehension of a rash or timid mind, that will justify the exercise of the right. Reasonable ground for the apprehension is requisite.

Suppose the threat to proceed from a woman or child and to

be addressed to a strong man : in such a case there could hardly be a reasonable apprehension.

Present and imminent danger seems to be meant. But if a man is preparing himself, as by seizing a dangerous weapon in such a way that he manifestly intends immediate violence, this seems sufficient justification of the exercise of the right ; for his conduct amounts to a threat, and the other has reason to consider the danger to be imminent.

When the danger is not present but may be avoided, can a man who voluntarily seeks it, be said to have a reasonable apprehension of such danger ? As if A knowing that B is waiting to attack and rob him, proceeds on his road with the deliberate purpose of resisting the attack with all necessary force, and does so, and thereby causes B's death. A appears to be entitled to the benefit of the exception, for he had a reasonable apprehension of danger when B attacked him, notwithstanding the attack was not unforeseen.

103. The right of private defence of property extends, under the restrictions mentioned in Section 99, to the voluntary causing of death or of any other harm to the wrong doer, if the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right, be an offence of any of the descriptions hereinafter enumerated, namely :—

- When the right of private defence of property extends to causing death.*
- Firstly.* Robbery ;
 - Secondly.* House-breaking by night ;
 - Thirdly.* Mischief by fire committed on any building, tent, or vessel, which building, tent, or vessel is used as a human dwelling, or as a place for the custody of property ;
 - Fourthly.* Theft, mischief, or house trespass, under such circumstances as may reasonably cause apprehension that death or grievous hurt will be the consequence, if such right of private defence is not exercised.

104. If the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right of private defence, be theft, mischief, or criminal trespass, not of any of the descriptions enumerated in the last preceding Section, that right does not extend to the voluntary causing of death, but does extend, subject to the restrictions mentioned in Section 99, to the voluntary causing to the wrong doer of any harm other than death.

105. *First.* The right of private defence of property commences when a reasonable apprehension of danger to the property commences.

Commencement and continuance of the right of private defence of property.

Second. The right of private defence of property against theft continues till the offender has effected his retreat with the property, or the assistance of the public authorities is obtained, or the property has been recovered.

Third. The right of private defence of property against robbery continues as long as the offender causes or attempts to cause to any person death or hurt or wrongful restraint, or as long as the fear of instant death, or of instant hurt, or of instant personal restraint continues.

Fourth. The right of private defence of property against criminal trespass or mischief continues as long as the offender continues in the commission of criminal trespass or mischief.

Fifth. The right of private defence of property against house-breaking by night, continues as long as the house-trespass which has been begun by such housebreaking continues.

A recapture of the plundered property, while it is in course of being carried away is authorized, for the taking and retaking is one transaction. But when the offence has been committed and the property removed, a recapture after an interval of time by the owner or by other persons on his behalf, however justi-

fiable, cannot be deemed an exercise of the right of defence of property. The recovery which the Section contemplates seems to be a recovery either immediate or made before the offender has reached his final retreat. As where stolen cattle are tracked until ultimately overtaken in their retreat and recaptured.

Suppose Z commits theft of A's horse, and rides away with it. Here A has a right of private defence, which lasts till either Z can effect his retreat with the property, or till A can recover his horse. A pursues Z and, not being able to overtake him, shoots him dead. The right of private defence, which in no case extends to the inflicting of more harm than is necessary, would perhaps not justify the infliction of death in such a case.

In cases where acts of violence are done in the alleged exercise of the right of private defence of property against criminal trespass or mischief, it will be necessary carefully to attend to the restrictions which the law imposes on this right. Suppose such a case as the following: A and B have a dispute respecting land in the possession of B. A in the exercise of some right or supposed right, threatens to plough up the crop which has been sown and to use the land for some other purpose; and he assembles men to execute forcibly this purpose. B, knowing of this, collects persons in defence of his property. If any violence ensues under these circumstances, no question can arise as to the right of self-defence, unless the person who seeks to justify his acts under this exception, can show that he applied for the protection of the law and did what in him lay to procure its intervention.

106. If, in the exercise of the right of private defence against an assault which reasonably causes the apprehension of death, the defender be so situated that he cannot effectually exercise that right without risk of harm to an innocent person, his right of private defence extends to the running of that risk.

Right of private defence against a deadly assault when there is risk of harm to an innocent person.

Illustration.

A is attacked by a mob who attempt to murder him. He cannot effectually exercise his right of private defence without firing on the mob, and he cannot fire without risk of harming young children who are mingled with the mob. A commits no offence if by so firing he harms any of the children.

A man must not escape death by designedly causing the death of an innocent person, but in the case supposed he is excused for causing an innocent person to run the risk of death.

CHAPTER V.
OF ABETMENT.

When an offence is committed and several persons take part in the commission of it, each person may contribute in a manner and degree different from the others to the doing of the criminal act.

The act may be done by the hands of one person while another is present, or is close at hand ready to afford help; or the actual doer may be a guilty agent acting under the orders of an absent person: and besides these participators, there may be other persons who contribute less directly to the commission of the offence by advice, persuasion, incitement or aid. It is proper to mark the nature and degree of participation which is essential to criminal liability, but it will be seen that the several gradations of action above referred to, are not always treated as denoting necessarily different measures of guilt with a view to distinctions in respect of punishment.

The law concerning principal offenders and accessories or abettors is contained in Sections 34—38 of Chapter II., and in the present Chapter. The several definitions of offences throughout the Code, construed with reference to these provisions, extend the operation of the Code to all who commit

or abet the commission of an offence, or who contribute to it in any degree which a penal law can notice.

We have seen that if several persons, combining both in intent and act, commit an offence jointly, each is guilty, as if he had done the whole alone; and that so it is, if each has his several part to do, all contributing to one result. When all thus combine, each does the act so far as his own part extends, and, as to the residue, may be regarded as procuring it to be done by means of guilty agents: all the parties so concerned, stand in the mutual relation of principals and agents.

The present Chapter treats of criminal agency of a less direct and immediate kind; the agent being urged forward by a person who will not himself act, but who procures or instigates another to put in execution his criminal intention.

The offence of abetment must mainly depend on the guilty knowledge or intention of the abettor. The knowledge or intention of the person he employs to act for him, will not affect or alter the abettor's guilt, although the acts of that person may have an important bearing in determining it. The measure of punishment which the Code awards to abettors depends on the effect of the abetment; a distinction being made between cases in which the abetment is successful, and those in which the effect intended is not accomplished. If the act abetted is done, the abettor is punished as if he had himself committed the offence. If the act abetted is not done, he is punished less severely, but regard is had to the result of his abetment; any hurt which may be caused being deemed an aggravation of his offence. But no distinction seems to be made, as regards the abettor's punishment, between cases in which the person abetted involuntarily fails, or is prevented from carrying his intention into execution, and those in which he resists altogether the solicitations of the abettor.

Again, the person abetted may be guilty of a criminal act, and his abettor may in no way be answerable for it, because the act done goes beyond or is quite distinct from the act

intended by the abettor: he must answer for any probable consequence of his abetment, notwithstanding that the act or result may not be precisely what he intended, but he is not further responsible. The question will be this, Is the act done, although not precisely the act intended to be done, yet substantially the same, or a probable result of that act? If so, the abettor must answer for it.

The sort of conduct which constitutes abetment is explained, but no rule is or could be laid down on the subject of the degree of incitement or the force of the persuasion used, which will suffice to make a person an abettor.

The provisions of this, as of all succeeding Chapters, must be read with the foregoing Chapters of General Explanations and General Exceptions. Construed with reference to the latter Chapter, it is clear that those who cannot commit offences cannot be abettors of offences: therefore infants, insane persons and others excepted from criminal liability cannot be abettors.

The first Section of this Chapter explains what acts or conduct of a person shall be deemed to constitute him an abettor of the doing of a thing whether such thing is in him an offence or not. The thing done may be criminal and yet no *offence* (in the language of the Code) in the actual doer, because being an infant or an insane person, &c. no guilt can be imputed to him. To distinguish between things done by such persons and things done by guilty agents, this form of expression is used.

Abetment is 1, by instigation; 2, by conspiracy; 3, by aid.

Abetment of a thing. 107. A person abets the doing of a thing, who,

First.—Instigates any person to do that thing.

Explanation 1.—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Illustration.

A, a public officer, is authorized by a warrant from a Court of Justice to apprehend Z. B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

The illustration is an instance of instigation by wilful misrepresentation. Instigation by wilful concealment is where some duty exists which obliges a person to disclose a fact. Not every trivial misrepresentation or concealment will constitute such an instigation; it must concern a material fact, and the instigator must thereby intend to cause, or know it to be likely that he will cause, the doing of the thing. (See Section 39. Explanation of "Voluntarily.")

Instigation may be by advising, commanding, hiring or otherwise inciting or encouraging a person to act. Words which amount merely to a permission may perhaps amount to an instigation, but this will depend on the position of the speaker and the occasion on which they are spoken. As to mere omissions, such as an omission by a private person to give the police information respecting an offence, they cannot amount to instigation by concealment or otherwise, unless they are illegal,—that is, unless the law has imposed the duty of giving such information on the persons charged with the omission.

Or who,

Secondly.—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing:

Two or more persons may be said to engage in a conspiracy for the doing of a thing when they combine and agree to do it or to cause it to be done: but this combination alone will not make them abettors, though they may have discussed plans,

adopted resolutions and interchanged promises of fidelity, unless an act in pursuance of the conspiracy has taken place.

Suppose A and B conspire to poison Z. A, in pursuance of this conspiracy, and in order to the poisoning of Z, causes C, an innocent person, to buy poison and to deliver it to B for the purpose. Here A and B have abetted the death of Z.

The nature of abetment by conspiracy requires that more than one person should be concerned in it. The person who does the thing may be a person distinct from any of those engaged in the conspiracy, for the intervention of a third person does not make them the less abettors. See Explanation 5 of Section 108 and the Illustrations, &c.

Or who,

Thirdly.—Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 2.—Whoever, either prior to or at the time of the commission of an act, does any thing in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

Concealment, when it is wilful and relates to a fact which a person is bound to disclose, constitutes abetment by aid, the aid being given by this illegal omission.

108. A person abets an offence who abets either
 Abettor. the commission of an offence,
 or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor.

Explanation 1.—The abetment of the illegal omission of an act may amount to an offence, although the abettor may not himself be bound to do that act.

If a public servant is guilty of an illegal omission of duty made punishable by the Code, and a private person instigates him, he abets the offence of which such public servant is guilty,—

although the abettor, being a private person, could not himself have been guilty of that offence.

Explanation 2.—To constitute the offence of abetment, it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused.

Illustrations.

(a) A instigates B to murder C. B refuses to do so. A is guilty of abetting B to commit murder.

(b) A instigates B to murder D. B in pursuance of the instigation stabs D. D recovers from the wound. A is guilty of instigating B to commit murder.

In the punishment of abetment regard is had to its effect : but the offence is complete notwithstanding that the person abetted refuses to do the thing, or fails involuntarily in doing it, or does it and the expected result does not follow.

Explanation 3.—It is not necessary that the person abetted should be capable by law of committing an offence, or that he should have the same guilty intention or knowledge as that of the abettor, or any guilty intention or knowledge.

Illustrations.

(a) A, with a guilty intention, abets a child or a lunatic to commit an act which would be an offence, if committed by a person capable by law of committing an offence, and having the same intention as A. Here, A, whether the act be committed or not, is guilty of abetting an offence.

(b) A, with the intention of murdering Z, instigates B, a child under seven years of age, to do an act which causes Z's death. B, in consequence of the abetment, does the act, and thereby causes Z's death. Here, though B was not capable by law of committing an offence, A is liable to be punished in the same manner as if B had been capable by law of committing an offence, and had committed murder, and he is therefore subject to the punishment of death.

(c) A instigates B to set fire to a dwelling-house. B, in consequence of the unsoundness of his mind, being incapable of knowing the nature of the act, or that he is doing what is wrong or contrary to law, sets fire to the house in consequence of A's instigation. B has committed no offence, but A is guilty of abetting the offence of setting fire to a dwelling-house, and is liable to the punishment provided for that offence.

(d) A, intending to cause a theft to be committed, instigates B to take property belonging to Z out of Z's possession. A induces B to believe that the property belongs to A. B takes the property out of Z's possession, in good faith, believing it to be A's property. B, acting under this misconception, does not take dishonestly and therefore does not commit theft. But A is guilty of abetting theft, and is liable to the same punishment as if B had committed theft.

Explanation 4.—The abetment of an offence being an offence, the abetment of such an abetment is also an offence.

Illustration.

A instigates B to instigate C to murder Z. B accordingly instigates C to murder Z, and C commits that offence in consequence of B's instigation. B is liable to be punished for his offence with the punishment for murder, and as A instigated B to commit the offence, A is also liable to the same punishment.

It appears from this, that a person may make himself an abettor by the intervention of a third person, without any direct communication between himself and the person employed to do the thing.

Explanation 5.—It is not necessary to the commission of the offence of abetment by conspiracy that the abettor should concert the offence with the person who commits it. It is sufficient if he engage in the conspiracy in pursuance of which the offence is committed.

Illustration.

A concerts with B a plan for poisoning Z. It is agreed that A shall administer the poison. B then explains the plan to C, mentioning that a third person is to administer the poison, but without mentioning A's name. C agrees to procure the poison and procures and delivers it to B for the purpose of its being used in the manner explained. A administers the poison. Z dies in consequence. Here, though A and C have not conspired together, yet C has been engaged in the conspiracy in pursuance of which Z has been murdered. C has therefore committed the offence defined in this Section and is liable to the punishment for murder.

109. Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment

Punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment.

of such abetment, be punished with the punishment provided for the offence.

Explanation.—An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.

Illustrations.

(a) A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. B accepts the bribe. A has abetted the offence defined in Section 161.

(b) A instigates B to give false evidence. B, in consequence of the instigation, commits that offence. A is guilty of abetting that offence, and is liable to the same punishment as B.

(c) A and B conspire to poison Z. A, in pursuance of the conspiracy, procures the poison and delivers it to B in order that he may administer it to Z. B, in pursuance of the conspiracy, administers the poison to Z in A's absence and thereby causes Z's death. Here B is guilty of murder. A is guilty of abetting that offence by conspiracy, and is liable to the punishment for murder.

The abettor is liable to any punishment which may be inflicted on the principal offender, if the act of the latter is "committed in consequence of the abetment." Suppose a full interruption of the original design, which is laid aside and abandoned: afterwards, acting from other motives, or on other and new provocation or temptation, the principal offender resumes his former purpose and commits the offence. The abettor of the original design is not liable to the full punishment provided for this offence.

This Explanation is not to be understood to require substantive proof that the offence is a consequence of the instigation, aid, &c., which precedes it. The instigation or other mode of abetment being shewn and also the criminal object intended to be thereby promoted, no positive proof seems to be required that the offence committed is a consequence of the instigation. Nor would it, under such circumstances, be any defence to shew that the offence would have been committed although the instigation, &c., had never taken place.

“And no express provision,” &c. In several instances throughout the Code, the punishment of abetment is fixed, not according to the principles on which the ordinary law of abetment is framed, but by express provision. (See Sections 121, 122, 131, 132, &c.)

The proof in support of a charge of abetment under this Section, must be proof of some of those acts or matters which have been explained by Section 107 to constitute abetment, and of the object thereby contemplated; and proof that the thing abetted has been done. What is done must appear to be an *offence*, that is, a thing made punishable by this Code.

110. Whoever abets the commission of an offence shall, if the person abetted does the act with a different intention from that of the abettor, be punished with the punishment provided for the offence which would have been committed if the act had been done with the intention or knowledge of the abettor and with no other.

111. When an act is abetted and a different act is done, the abettor is liable for the act done, in the same manner and to the same extent as if he had directly abetted it; provided the act done was a probable consequence of the abetment, and was committed under the influence of the instigation, or with the aid, or in pursuance of the conspiracy which constituted the abetment.

Illustrations.

(a) A instigates a child to put poison into the food of Z and gives him poison for that purpose. The child, in consequence of the instigation, by mistake puts the poison into the food of Y, which is by the side of that of Z. Here, if the child was acting under the influence of A's instigation and the act done was under the circumstances a probable consequence of the abetment, A is liable in the same manner and to the same extent as if he had instigated the child to put the poison into the food of Y.

(b) A instigates B to burn Z's house. B sets fire to the house and at the same time commits theft of property there. A, though

guilty of abetting the burning of the house, is not guilty of abetting the theft; for the theft was a distinct act and not a probable consequence of the burning.

(c) A instigates B and C to break into an inhabited house at midnight for the purpose of robbery, and provides them with arms for that purpose. B and C break into the house, and being resisted by Z, one of the inmates, murder Z. Here, if that murder was the probable consequence of the abetment, A is liable to the punishment provided for murder.

It is sufficient if the act done was a probable consequence of the abetment. It is not, it seems, necessary that the abettor should know it to be a probable consequence.

112. If the act for which the abettor is liable under the last preceding Section is committed in addition to the act abetted and constitutes a distinct offence, the abettor is liable to punishment for each of the offences.

Abettor when liable to cumulative punishment for act abetted and for act done.

Illustration.

A instigates B to resist by force a distress made by a public servant. B, in consequence, resists that distress. In offering the resistance, B voluntarily causes grievous hurt to the officer executing the distress. As B has committed both the offence of resisting the distress and the offence of voluntarily causing grievous hurt, B is liable to punishment for both these offences; and if A knew that B was likely voluntarily to cause grievous hurt in resisting the distress, A will also be liable to punishment for each of the offences.

113. When an act is abetted with the intention on the part of the abettor of causing a particular effect, and an act for which the abettor is liable in consequence of the abetment, causes a different effect from that intended by the abettor, the abettor is liable for the effect caused, in the same manner and to the same extent as if he had abetted the act with the intention of causing that effect; provided he knew that the act abetted was likely to cause that effect.

Liability of abettor for an effect caused different from that intended by the abettor.

Illustration.

A instigates B to cause grievous hurt to Z. B, in consequence of the instigation, causes grievous hurt to Z. Z dies in consequence.

Here, if A knew that the grievous hurt abetted was likely to cause death, A is liable to be punished with the punishment provided for murder.

A person would not be liable for an unexpected effect or for an effect which could not have been foreseen to be probable. Suppose the instigation was to inflict some small hurt on Z, not calculated of itself to endanger his life, and Z by intemperance, or neglect, or bad treatment, dies, A would not be answerable for his death.

The illustrations shew clearly the distinct operation of this Section and Section 111.

114. Whenever any person, who, if absent would be liable to be punished as an abettor, is present when the act or offence for which he would be punishable in consequence of his abetment is committed, he shall be deemed to have committed such act or offence.

Abettor present when offence is committed.

By virtue of this provision such an abettor may, on his trial, be charged with the offence as if he had himself committed it. Suppose several persons are present and concerned in the commission of an offence, but it is uncertain which of them actually committed it, and which aided the commission ; each may be charged as a principal offender.

115. Whoever abets the commission of an offence punishable with death or transportation for life, shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine ; and if any act for which the abettor is liable in consequence of the abetment, and which causes hurt to any person, is done, the abettor shall be liable to imprisonment of either de-

Abetment of an offence punishable with death or transportation for life if the offence be not committed in consequence of the abetment.

If an act which causes harm be done in consequence of the abetment.

scription for a term which may extend to fourteen years, and shall also be liable to fine.

Illustration.

A instigates B to murder Z. The offence is not committed. If B had murdered Z he would have been subject to the punishment of death or transportation for life. Therefore A is liable to imprisonment for a term which may extend to seven years and also to fine; and if any hurt be done to Z in consequence of the abetment, he will be liable to imprisonment for a term which may extend to fourteen years, and to fine,

For the offences which are punishable with death or transportation for life. See page 33.

“If that offence be not committed in consequence,” &c. The notes to Section 109 should be referred to. The present Section punishes the abetment of certain offences which are either not committed at all, or not committed in consequence of abetment, or only in part committed.

“Hurt”—whoever causes bodily pain, disease, or infirmity, causes hurt. See Section 319.

There should be proof of instigation or some other kind of abetment, and of the object of such instigation; and (under the latter clause) of hurt caused by an act done in consequence.

116. Whoever abets an offence punishable with imprisonment shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment of any description provided for that offence, for a term which may extend to one-fourth part of the longest term provided for that offence, or with such fine as is provided for that offence, or with both; and if the abettor or the person abetted is a public servant, whose duty it is to prevent the commission of such offence, the abettor shall be punished with imprisonment of any description provided for that offence, for a term which may

Abetment of an offence punishable with imprisonment, if the offence be not committed in consequence of the abetment.

If the abettor or the person abetted be a public servant whose duty it is to prevent the offence.

extend to one-half of the longest term provided for that offence, or with such fine as is provided for the offence, or with both.

Illustrations.

(a) A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. B refuses to accept the bribe. A is punishable under this Section.

(b) A instigates B to give false evidence. Here, if B does not give false evidence, A has nevertheless committed the offence defined in this Section, and is punishable accordingly.

(c) A, a police officer, whose duty it is to prevent robbery, abets the commission of robbery. Here, though the robbery be not committed, A is liable to one-half of the longest term of imprisonment provided for that offence, and also to fine.

(d) B abets the commission of a robbery by A, a police officer, whose duty it is to prevent that offence. Here, though the robbery be not committed, B is liable to one-half of the longest term of imprisonment provided for the offence of robbery, and also to fine.

For the offences punishable with transportation, see p. 33, ante.

The proof will be the same as under the preceding Section ; except that to support a charge under the last clause of the present Section, there must be proof that the person is a Police Officer or other such public servant. Proof that he acted as such public servant will be sufficient. See Section 21, Explanation 2.

117. Whoever abets the commission of an offence by the public generally or by any number or class of persons exceeding ten, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Abetting the commission of an offence by the public or by more than 10 persons.

Illustration.

A affixes in a public place a placard, instigating a sect consisting of more than ten members to meet at a certain time and place, for the purpose of attacking the members of an adverse sect, while engaged in a procession. A has committed the offence defined in this Section.

The word "public" is explained. See Section 12.

It will be sufficient to shew any instigation or other mode of abetment, though neither the effect intended, nor any effect follows from it. It seems the evidence should show either some act done, or if words spoken are relied on, that they were spoken deliberately and advisedly.

The remaining Sections of this Chapter relate to an offence (the concealing, or making a false representation, of a design to commit certain offences) which does not, it seems, amount to abetment of any of the kinds hitherto mentioned. We have seen that a wilful misrepresentation or concealment constitutes abetment by instigation, only when it concerns a material fact which a person is bound by some legal duty to disclose. All the modes of abetment hitherto spoken of are such as by their influence and positive efficacy conduce to the commission of the act or offence.

In the offences made punishable by the three remaining Sections,—which offences although treated of in this Chapter of Abetment, are nowhere said to constitute abetment,—the aid given is of a remote kind: and the offences, which appear rather to belong to the Chapter of Offences against Public Justice than to Abetment, are complete although that which constitutes them falls short of any of the modes of abetment yet described. The offender facilitates the commission of an offence, because by his concealment or misrepresentation the attention of those interested, who would probably prevent the commission, is not excited. But his conduct, though it tends to facilitate the offence, does so in a remote degree. Indeed a concealment may possibly be in no way intended to obstruct public justice, but rather calculated to prevent the commission of an offence: as if a person should conceal,—that is, omit to disclose,—some criminal design of his friend in the hope that his influence might prevail to induce him to lay aside his purpose.

118. Whoever intending to facilitate, or knowing

Concealing a design to commit an offence punishable with death or transportation for life—

with death or transportation for life, voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any re-

If the offence be committed. presentation which he knows to be false respecting such design shall, if that offence be committed, be punished with imprisonment of either description for a term which may extend to

If the offence be not committed. seven years; or, if the offence be not committed, with impri-

sonment of either description for a term which may extend to three years; and in either case shall also be liable to fine.

Illustration.

A, knowing that dacoity is about to be committed at B, falsely informs the Magistrate that a dacoity is about to be committed at C, a place in an opposite direction, and thereby misleads the Magistrate with intent to facilitate the commission of the offence. The dacoity is committed at B in pursuance of the design. A is punishable under this Section.

“Whoever, &c.” The Section is general in its terms and would seem to apply to all persons, not merely to Officers of Justice or public servants whose duty it is to prevent crime and to give information concerning offenders. But concealment by *illegal* omission can be an offence, only when the omission is by some person bound by law to make report of offences.

“The existence of a design, &c.” There must exist a design to commit at some future time an offence of the kind described, and no conviction should take place until the Court has sufficient proof that such a design existed. Usually, the criminal law does not attempt to reach the wicked designs or intentions of men, until they have been made manifest by outward acts. And in the present case it would seem proper that the existence of the design should be proved and established to the judge’s satisfaction by proof of some open act (or some illegal omission) such as is requisite in abetment by conspiracy ;

or by advised and open speaking. Mere idle talk, boasting, &c., would not prove it; there must be some design which, if not completely fixed and settled, has proceeded towards completion.

The concealment must be voluntary; that is, it must be intended on the part of the person concealing, or, if he had no actual intention, his act must have been likely to cause the result. And so of the misrepresentation. It seems that here, as in the case of abetment by instigation, the misrepresentation respecting the design must be of something material. The essence of this offence is the intention or knowledge that the commission of a grave offence will be facilitated. If the evidence establishes the existence of a criminal design and the knowledge of such design by the accused person, his guilty intention to facilitate its commission may be inferred, unless he can satisfactorily explain the act or illegal omission imputed to him.

“An offence punishable with death or transportation for life,” &c. See a list of such offences ante, pp. 33, 34.

“If that offence be committed, &c.” As in abetment, the punishment varies according as the offence is committed or not. Suppose the very offence designed is not committed, but another offence sufficiently akin to it to make an abettor liable for the offence actually committed (Section 111 ante),—the offender under the present Section would, it seems, in like manner be answerable.

119. Whoever, being a public servant, intending

A public servant concealing a design to commit an offence which it is his duty to prevent.

to facilitate, or knowing it to be likely that he will thereby facilitate, the commission of an offence which it is his duty as such public servant to prevent, voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design,

If the offence be committed. shall, if the offence be committed, be punished with imprisonment of any description provided for the offence, for a term which may

extend to one-half of the longest term of such imprisonment, or with such fine as is provided for that offence, or with both ; or, if the offence be punishable

If the offence be punishable with death or transportation with death, &c. for life, with imprisonment of

either description for a term which may extend to

If the offence be not committed. ten years ; or, if the offence be not committed, shall be punished

with imprisonment of any description provided for the offence for a term which may extend to one-fourth part of the longest term of such imprisonment, or with such fine as is provided for the offence, or with both.

Illustration.

A, an officer of police, being legally bound to give information of all designs to commit robbery which may come to his knowledge, and knowing that B designs to commit robbery, omits to give such information, with intent to facilitate the commission of that offence. Here A has by an illegal omission concealed the existence of B's design, and is liable to punishment according to the provision of this Section.

See the note to the last preceding Section. The offence is aggravated here, because the offender is a public servant.

120. Whoever, intending to facilitate or knowing

Concealing a design to commit an offence punishable with imprisonment.

it to be likely that he will thereby facilitate the commission of an offence punishable

with imprisonment, voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design, shall, if the

If the offence be committed. offence be committed, be punished with imprisonment of the description provided for the offence for a term which may extend to one-

If not committed. fourth, and, if the offence be not committed, to one-eighth of the longest term of such imprisonment, or with such fine as is provided for the offence, or with both.

See the note to Section 118. The design which is concealed is to commit a less heinous offence than the offences there referred to.

CHAPTER VI.

OF OFFENCES AGAINST THE STATE.

Three classes of offences are made punishable by this Chapter. 1. Offences against the Queen and her Government. 2. Offences concerning the relations of the Indian Government with other Governments. 3. Offences touching the custody of Prisoners of State or of War. Of these the first class is the most important.

I. Offences against the Queen and Her Government.

It is necessary to punish with severity those offences which threaten to destroy or injure the whole fabric of political society. The subversion of the Government, with the consequent dissolution of the bonds of civil society, is commonly regarded as the highest crime a member of a community can perpetrate. It is a duty which every subject owes to the Government under which he lives not to attempt its overthrow, and to give to the State and its Rulers, in return for that protection which the State affords to him, a true and faithful obedience. The tie which thus binds the subject to the State is called allegiance.*

The people of British India, besides the allegiance which they owe to the Queen in common with all her subjects throughout her dominions, are bound also to submit themselves to the authority of those who are appointed by her to adminis-

* In the Royal Proclamation issued on the assumption of the Government of the British Territories in India by the Queen, Her Majesty notifies and declares as follows: "We have taken upon ourselves the said Government; and we hereby call upon all our subjects within the said Territories to be faithful, and to bear true allegiance to us, our heirs and successors, and to submit themselves to the authority of those whom we may hereafter, from time to time, see fit to appoint to administer the Government of our said Territories, in our name and on our behalf."

And further, "We hold ourselves bound to the Natives of our Indian Territories by the same obligations of duty which bind us to all our other subjects; and those obligations, by the blessing of Almighty God, we shall faithfully and conscientiously fulfil."

ter the Government of British India. Her Indian subjects may be guilty of criminal acts which are offences against the Government of India, as well as of criminal acts which are offences against the general Government of the British empire. It is only so far as offences of both these descriptions are defined and punished by this Code that it is necessary to notice them here.

The English law of high treason, by which offences in breach of the allegiance owing to the Queen by her subjects are punished, includes certain offences subversive of the Government, or directed immediately against the person of the Sovereign and certain members of the royal family. Of these the following are the chief: 1. Compassing or imagining the death of the king, the queen consort, or their eldest son and heir: 2. Levying war against the king within his realm: 3. Adherence to the king's enemies in his realm, giving them aid and comfort in the realm or elsewhere. Under this description (king) a queen regnant, such as Queen Elizabeth and our present gracious sovereign Queen Victoria, is included.

This law, overlaid by a mass of constructions and precedents, is still the English Statute law of high treason. Its application to persons in India not subject to the jurisdiction of the Courts established by Royal Charter has been considered exceedingly doubtful; and it is quite certain that no Mofussil Court has ever enforced it against a native. It is not necessary to notice further the law of treason. As far as that law respects offences directed immediately against the person of the Sovereign and the members of the royal family, occasion for it can scarcely arise in India.

The main characteristic of the State offences contained in the first part of this Chapter, is the breach of the allegiance due from the subject to the ruler: and *allegiance* has been explained to be the tie which binds the subject to the State in return for the protection he receives. These Sections therefore apply only to such persons as owe allegiance to the Government. This allegiance is natural,—that is, arising from birth under the

protection of the Government : or local,—that is, arising from temporary residence under such protection, as when a foreigner enters the country, and accepts the protection of the Government and so submits to obey its laws.

121. Whoever wages war against the Queen, or attempts to wage such war, or wages or attempting to wage war, or abetting the waging of war against the Queen. abets the waging of such war, shall be punished with death, or transportation for life, and shall forfeit all his property.

Illustrations.

(a) A joins an insurrection against the Queen. A has committed the offence defined in this Section.

(b) A in India abets an insurrection against the Queen's Government of Ceylon by sending arms to the insurgents. A is guilty of abetting the waging of war against the Queen.

All persons owing allegiance to the Queen may be guilty of this offence, but not foreigners, who owe no allegiance and for whom the Indian legislature has no power to make laws. Therefore a Prince or subject of a foreign State by which war is lawfully waged against our Government, is not within the meaning of this Section. But foreigners owing local allegiance are within the section.

“Wages war against, &c.” The simple construction of these terms must, it is conceived, be adopted.*

The words seem naturally to import a waging or levying of war by one who, throwing off the duty of allegiance, arrays himself in open defiance of his Sovereign or rulers in like manner and by the like means as a foreign enemy would do having obtained a footing within British territories. An array of

* The corresponding phrase “levy war” in the English law of treason has received a latitude of construction which would probably not be applied to this provision. The Statute 11 and 12 Vic. C. 12, though not affecting the old law of treason, has now confined the expression “levy war” within narrow and definite limits. The so-called war must be levied for one of the definite objects specified in the Act, i. e.—in order by force or constraint to compel the Queen to change her counsels, or—in order to put force or constraint upon, or in order to intimidate or overawe, both Houses or either House of Parliament, or—in order to move or stir any foreigner or stranger with force to invade any of the Queen's dominions.

force seems intended : war waged within the British territories, not of a different nature from a war waged out of them. An insurrection to change or destroy the Government itself is meant. An endeavour by violence to suppress in particular cases the execution of laws enacted by the Government, or to violate and overbear the protection they afford to individuals, though such endeavour may constitute grave offences against individuals, would not probably be offences against the State. So, if we suppose the like endeavours to be directed not against individuals but against a class of the community by premeditated open acts of violence, hostility, and force, it may also perhaps be questioned whether the offenders are amenable to this Section of the Code as State offenders : for they have no design to hurt or destroy the Government by their violent insult and infraction of its laws.

Attempts and abetments in the case of great State offences are not left to be punished in the ordinary way by the provisions contained in the Chapters on those heads. Express provision is made for their punishment, whether the offence is committed or not, in the same way as the offence itself. Plots and preparations for State offences are not left to the ordinary law of abetment, because such offences, and especially the most heinous and formidable State crimes, have this peculiarity, that if they are successfully committed, the criminal is almost always secure from punishment.

“Attempts to wage &c.” An attempt is an intention to do a thing, combined with an act which falls short of the thing intended. Coupled with the intention, any illegal act which is not merely a step towards the commission of the offence but a commencement of the execution of the criminal purpose will constitute an attempt.

“Or abets, &c.” The several modes of abetment are described in Section 107 ante. Proof should be given of the acts which constitute the waging or attempt, &c. If the prisoner is ordinarily resident in our territories, he may be taken to be a person owing allegiance to the Queen.

122. Whoever collects men, arms, or ammunition, or otherwise prepares to wage war with the intention of either waging, or being prepared to wage war against the Queen, shall be punished with transportation for life or imprisonment of either description for a term not exceeding ten years, and shall forfeit all his property.

The acts made punishable by this Section cannot be considered attempts; they are in truth preparations made for committing the offence of waging war. Such acts would seem to constitute the doer an abettor, if done in aid of others who are waging or who intend to wage war.

“Or otherwise prepares, &c.,” as by making or strengthening a fort, by accumulating stores and munitions of war of any kind, &c.

123. Whoever by any act, or by any illegal omission, conceals the existence of a design to wage war against the Queen, intending by such concealment to facilitate, or knowing it to be likely that such concealment will facilitate the waging of such war, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

“Whoever, &c.” The persons hereby comprised are the same as those in the previous Sections. The offence punished by this Section is like a species of abetment by aid, such as is mentioned in Section 118 of the preceding Chapter. The concealment here may be either by an act or by an illegal omission: but it must be a concealment with an intention and knowledge which shew a wish to facilitate the execution of a design to wage war: and the existence of the design must be proved.

124. Whoever, with the intention of inducing or compelling the Governor-General of India, or the Governor of any Presidency, or a Lieutenant-Governor, or a Member of the Council of the Governor-General of India, or of the Council of any Presidency, to exercise or refrain from exercising in any manner any of the lawful powers of such Governor-General, Governor, Lieutenant-Governor, or Member of Council, assaults or wrongfully restrains, or attempts wrongfully to restrain, or overawes by means of criminal force or the show of criminal force, or attempts so to overawe such Governor-General, Governor, Lieutenant-Governor, or Member of Council, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

“Assaults or wrongfully restrains,” &c. The offences here enumerated (*assault &c.*) will be found defined in subsequent Chapters. When these offences are committed and the aggravation is added, that they are committed with the intention mentioned in this Section and are directed immediately against the persons of the members of the Government, they rank as offences against the State.

II. Offences concerning the relations of the British Government in India with other Governments, are the second class of offences included in this Chapter. The relations between States, and the duties owing by them to one another, are matters beyond the scope of the municipal law of any particular State. But it is competent to every State, and is even its duty, to provide that its citizens, or those whom it has power to bind by law, shall do nothing to injure its allies or those States with whom it holds friendly relations. All who owe obedience to the laws of British India are subject to the following provisions,—and this as well for what they do beyond, as for what they do within, British Indian territories.

125. Whoever wages war against the Government of any Asiatic power in alliance or at peace with the Queen, or attempts to wage such war, or abets the waging of such war, shall be punished with transportation for life, to which fine may be added; or with imprisonment of either description for a term which may extend to seven years, to which fine may be added; or with fine.

Persons whether subjects of the Queen, or refugees and aliens who have taken up their abode temporarily in our territories, must be restrained from making British India the focus of intrigues and enterprises for the restoration of deposed rulers, or other like purposes. And the fulfilment of the obligations of the State to allies and friendly powers, requires that the abetment of such schemes by its subjects whether by furnishing supplies or otherwise should be forbidden.

Persons owing obedience to our laws will be punishable for these offences although committed beyond the limits of British India.

126. Whoever commits depredation, or makes preparations to commit depredation, on the territories of any power in alliance or at peace with the Queen, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine and to forfeiture of any property used or intended to be used in committing such depredation, or acquired by such depredation.

“Commits depredations, &c.” Something more than a mere outrage against the property of an individual seems contemplated; probably the license which native chiefs sometimes use, or allow their people to use, of making predatory expeditions into adjacent territory to plunder cattle, grain, &c.

“Makes preparation to,” &c., See the notes to Section 121.

127. Whoever receives any property knowing the same to have been taken in the commission of any of the offences mentioned in Sections 125 and 126, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine and to forfeiture of the property so received.

Receiving property taken by war or depredation mentioned in Sections 125 and 126.

The depredators, be they our own subjects, or foreigners taking refuge with their plunder within our borders, would not, it is conceived, come within this provision, by their mere possession of that booty : there must be a fresh act of receiving, something in the nature of a transfer of the property to new hands. Persons purchasing at a nominal price cattle, &c., knowing how they had been obtained, would be punishable under this Section.

III. Offences concerning the custody of prisoners of State or of War are also included among State offences. The extreme importance of the safe custody of those prisoners of State or War whom the British Government sometimes hold in charge in India, probably accounts for the insertion of these provisions here.

128. Whoever, being a public servant and having the custody of any State Prisoner or Prisoner of War, voluntarily allows such prisoner to escape from any place in which such prisoner is confined, shall be punished with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Public servant voluntarily allowing prisoner of State or war in his custody to escape.

Regulation III. 1818 of the Bengal Code, Regulation II. 1819 of the Madras Code, and Regulation XXV. 1827 of the Bombay Code, extended by Acts XXXIV. of 1850 and III. of 1858, are the laws which authorize the detention of persons as

State prisoners. It does not seem certain whether persons amenable to the jurisdiction of our Courts and convicted of any of the offences contained in this Chapter, would be properly deemed Prisoners of State. A person brought into our territory by the British Government with the concurrence of his own, and detained here involuntarily on political grounds, though a State prisoner within the meaning of this Chapter, could hardly be guilty of a State offence under any of the preceding Sections.

A prisoner of war is one who in war is taken in arms. Those who are not in arms, or who being in arms submit and surrender themselves, are not to be slain but to be made prisoners. But it seems those only are prisoners of war who are taken in arms.

“Voluntarily.” The meaning of this word, as importing that the act of the public servants is intentional, or done with a knowledge of the probable consequences, should be borne in mind. See Section 39.

To support a charge under this Section, there should be proof that the escaped person was in a place of confinement as a prisoner of State or of War; that the accused person was the gaoler, &c., who had the custody of the prisoner, which will sufficiently be shown by proof that he was actually in charge; and that he allowed the escape intentionally or knowingly, or aided it by supplying the prisoner with the means of effecting it.

129. Whoever, being a public servant and having the custody of any State Prisoner or Prisoner of War, negligently suffers such prisoner to escape from any place of confinement in which such prisoner is confined, shall be punished with simple imprisonment for a term which may extend to three years, and shall also be liable to fine.

Public servant negligently suffering prisoner of State or war in his custody to escape.

This offence is like the one last noticed, with the mitigating circumstance that the offence is not caused *voluntarily*, but

suffered *negligently*. The proof will be similar to proof under the preceding Section. If a prisoner breaks from the gaol or eludes those set to watch him, the accused should show that the gaol was in a proper state of security and that due vigilance was used. The principal officer in charge might probably be held criminally responsible under this Section for the conduct of his subordinates.

130. Whoever knowingly aids or assists any State prisoner or prisoner of War in escaping from lawful custody, or rescues or attempts to rescue any such prisoner, or harbours or conceals any such prisoner who has escaped from lawful custody, or offers or attempts to offer any resistance to the re-capture of such prisoner, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation.—A State Prisoner or Prisoner of War, who is permitted to be at large on his parole within certain limits in British India, is said to escape from lawful custody if he goes beyond the limits within which he is allowed to be at large.

“Knowingly aids.” It is essential to this very grave offence to show that the accused has a knowledge of the character in which the prisoner is confined, i. e. that he is a prisoner of State or of War. This Section uses words more extensive than the two preceding ones which contemplate an escape only from some prison or actual place of custody. From this Section with the explanation, it appears that the prisoner’s escape from much wider limits,—those of his parole,—is covered by the expression “lawful custody.” As to the offence of harbouring, no exception is made here as in Sections 136, 212 and 216, in favour of the wife or any member of the prisoner’s family; though, when such persons are the offenders, humanity suggests a lighter punishment.

Proof should be given that the person who escaped was in lawful custody, and that the accused, having knowledge of this circumstance, assisted his escape, as by giving him tools, supplying him with means of conveyance, &c.

CHAPTER VII.

OF OFFENCES RELATING TO THE ARMY AND NAVY.

This Chapter provides for the punishment of those persons who, not being themselves subject to Military or Naval law, assist or instigate those who are subject to such law to commit certain gross breaches of discipline. See Section 139.

It has already been enacted (Section 5) that nothing in this Act is intended to repeal, vary, suspend, or affect any of the provisions of any Act for punishing mutiny and desertion. Nevertheless the general provisions of this Act, subject to the above saving clause, apply to *offences* (see Section 40) committed by soldiers and sailors, as well as to offences committed by other members of the community. Any offence committed by a soldier against public justice or against property, is as much punishable under this Code as if the offender had been a private person, unless, by the saving clause above quoted, the penal provisions of the military law are applicable. And whoever instigates the soldier to commit such offence is punishable under the general provisions of the Code.

The laws to which the Army and Navy are specially subject, which are excepted by the 5th Section, are laws far more severe than those under which the general body of the people live, and have for their main object, the maintenance of discipline, not the punishment of crime. Purely Military

offences, which soldiers only can commit, as mutiny, desertion, and other offences to the prejudice of military discipline, are punished by those Laws. It is indeed true, that they also make some provision for the punishment of such offences as are made punishable by the present Code: but generally speaking, such provisions extend only to certain classes of persons, and to offences committed in certain places. The laws referred to are here shortly mentioned.

1. The Mutiny Act which is passed every year by the Imperial Parliament. This is the law which governs the Queen's Regiments serving in India. It relates chiefly to military discipline.

2. The Statute of Parliament 20 and 21 Vict. ch. 60 ("for punishing mutiny and desertion of officers and soldiers in the service of the East India Company"). This is the law which governs the European Forces, formerly in the service of the East India Company, and now forming a portion of Her Majesty's Indian Army. This law relates chiefly to military discipline. But it also provides for the trial and punishment of certain offences committed at any place more than 120 miles distant from either of the Presidency towns of Calcutta, Madras and Bombay.

Under one of the "Articles of War" (that is, rules for the government of the Forces which Her Majesty is empowered by each of these Acts of Parliament to make) Her Majesty's regiments in India are, as well as her Majesty's Indian Army, subject to the above provision. The result appears to be that officers and soldiers (not being natives) may be tried by Court Martial for crimes known to the English criminal law as amounting to treason and felony, and for any other crimes against person or property, if committed beyond 120 miles from a Presidency Town.

In general, the jurisdiction of the ordinary tribunals and their modes of proceeding apply to soldiers as to other persons. But when offences commonly cognizable by such tribunals are committed by soldiers in places beyond a certain distance from those tribunals or in places where no such tribunals exist, the

Courts Martial acquire jurisdiction under these provisions and may deal with offenders according to the common and statute law of England as modified by laws applicable to India.

3. For the Native officers and soldiers of the native army an Act of the Legislative Council (XIX. of 1847) for amending "the Articles of War for the Government of the Native Officers and Soldiers in the Military Service of the East India Company," provides rules of military discipline corresponding with those contained in the Statutes of Parliament and Articles of War which have been mentioned. This Act though generally known by the title of "Articles of War for the Native Army" also contains a complete Code of non-military offences for the persons subject to it.

4. Regarding sailors in the Navy (whether the Royal Navy or that which was formerly called the Indian Navy), it is enough to say that for the Royal Navy, the scheme of naval discipline, instead of being provided for by annual Acts of Parliament, as in the case of the Army, is laid down in a permanent Statute. For Her Majesty's Indian Navy the 3 and 4 Vict. c. 37 Sec. 43 enabled the Governor-General of India in Council to make Regulations; and Act XII. of 1844, amended by Acts XXVII. of 1848, and XXXIII. of 1858, provides for the Indian Navy a law similar to that which governs the Queen's Navy. All these laws relating to the Navy are strictly laws for enforcing discipline only; they make no provision for the punishment of crimes committed by sailors in the naval service. Such crimes will therefore, when committed in India, be punishable under this Code.

The present Chapter punishes persons who, not being themselves soldiers or sailors, abet soldiers and sailors in committing gross breaches of discipline. The laws which govern the Army and Navy cannot generally reach such offenders; and the other provisions of this Code do not reach them, because the act of insubordination, &c., which they abet, however grave as a breach of military discipline, may be no offence, or a very trivial one, under this Code. Hence the necessity of this

Chapter which punishes, but not with the severity of military Penal law, the abettors of soldiers and sailors in certain breaches of discipline.

131. Whoever abets the committing of mutiny by an officer, soldier, or sailor, in the Army or Navy of the Queen, or attempts to seduce any such officer, soldier, or sailor from his allegiance or his duty, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

Abetting mutiny or attempting to seduce a soldier or sailor from his duty.

The first part of this Section relates to the offence of abetting mutiny. The offence contemplated is an abetment which is not followed by actual mutiny,—or which, supposing actual mutiny follows, is not the cause of that mutiny.

The offence of mutiny consists in extreme insubordination, as if a soldier resists by force, or if a number of soldiers rise against or oppose their military superiors, such acts proceeding from alleged or pretended grievances of a military nature. Acts of a riotous nature directed against the Government or Civil Authorities rather than against military superiors seem also to constitute mutiny. A charge brought under this Section must be supported by proof of the instigation or other mode of abetment (see Section 107), and of its object, i. e. to excite to mutiny.

The latter clause of the Section, which is founded on a corresponding provision of an English statute, the 37 Geo. 3 c. 70 (made perpetual by 57 Geo. 3 c. 7, and amended as to punishment by 1 Vict. c. 91) relates to attempts to seduce soldiers from their duty. It is not easy to give any such interpretation of this general and vague expression as will assist the reader : but the rare cases which it governs, will probably present little difficulty in applying the law.

132. Whoever abets the committing of mutiny

Abetment of mutiny, if mutiny is committed in consequence thereof.

by an officer, soldier, or sailor, in the Army or Navy of the Queen, shall, if mutiny be committed in consequence of that abetment, be punished with death or with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

The offence here punished is abetment when actual mutiny is the consequence of it. The evidence should show that mutiny has been committed and the previous abetment. The words "committed in consequence, &c.," have been explained, see Section 109, Explan. It seems that that explanation, though not one of the General Explanations, is applicable to this and similar Sections making special provision for abetment.

The offence of circulating false rumours with intent to cause any officer, soldier or sailor in the Army or Navy of the Queen to mutiny is made punishable by the 505th section.

133. Whoever abets an assault by an officer, soldier,

Abetment of an assault by a soldier or sailor on his superior officer, when in the execution of his office.

or sailor, in the Army or Navy of the Queen, on any superior officer being in the execution of his office, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

The very comprehensive definition of assault given in Section 351 may be referred to, in order to ascertain the offence, (as defined by this Code) of which the abetment is made punishable by this and the following Section. The assault here meant may probably be that which the Mutiny Acts and Articles of War provide against, namely the striking a superior officer, or using or offering any violence against him when he is on duty. The words "any superior officer" of course exclude from this provision such assaults as one private soldier may commit on another. But they clearly comprehend all officers whether commissioned or non-commissioned,—for a non-commissioned officer is a superior officer in relation to a

private soldier, as a captain is to a subaltern, and the commanding officer of a Regiment to all the officers and men under his command.

It is an inseparable part of this offence, that the officer should be assaulted while in the execution of his office. An officer is in the execution of his office not only when he is performing a prescribed duty, but also when he is discharging a duty arising out of the exigency of the moment. Thus an officer seeing a soldier out of quarters after-hours, or improperly dressed or drunk in the streets of a town, or transgressing any order or usage of the service, would at all times be in the execution of his duty, and therefore of his office, in ordering the soldier to his barracks or directing such other measures as might be necessary. It must, however, be remembered that an important ingredient in the soldier's offence is, that he offers violence *knowingly* to his officer. If he strikes a person whom he or his abettor really does not know to be an officer, the offence of abetment which is here made punishable so severely, has not been committed by the person who abets the blow.

134. Whoever abets an assault by an officer, soldier, or sailor, in the Army or Navy of the Queen, on any superior officer being in the execution of his office, shall, if such assault be committed in consequence of that abetment, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

See the notes to the two preceding Sections. An enhanced punishment is given, if the assault is actually committed.

135. Whoever abets the desertion of any officer, soldier, or sailor, in the Army or Navy of the Queen, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

The offence of desertion from the Army or Navy consists in this, that the officer, soldier, or sailor is unlawfully absent from his duty, and has no intention of returning to it. Whether he departs without leave from his regiment, or whether, having leave of absence, he overstays his leave, if his intention is not to return to his duty and his regiment, he is a deserter. This intention not to return is essential to desertion, and without it, the offence becomes one which is known in military law as "absence without leave," an offence of a much lighter kind. The Section it seems, punishes the abetment of desertion only when the desertion actually takes place. The provision of the English statute which is quoted in the note to Section 136, may also be referred to here.

136. Whoever, except as hereinafter excepted, *Harbouring a deserter.* knowing or having reason to believe that an officer, soldier, or sailor, in the Army or Navy of the Queen, has deserted, harbours such officer, soldier, or sailor, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or both.

Exception. This provision does not extend to the case in which the harbour is given by a wife to her husband.

This provision must not be held to affect the jurisdiction which is usually given by the Annual Mutiny Act to all Courts of criminal jurisdiction in Her Majesty's dominions to punish by fine or imprisonment, or both, as a misdemeanor, the offence there defined in the following terms.—

"Any person who shall directly or indirectly procure any soldier to desert or attempt to procure or persuade any soldier to desert, any person who knowing that any soldier is about to desert shall aid or assist him in deserting, or knowing any soldier to be a deserter, shall conceal such deserter, or aid or assist such deserter in concealing himself, or aid or assist in his rescue."

137. The master or person in charge of a merchant vessel, on board of which any deserter from the Army or Navy of the Queen is concealed, shall, though ignorant of such concealment, be liable to a penalty not exceeding five hundred Rupees, if he might have known of such concealment but for some neglect of his duty as such master or person in charge, or but for some want of discipline on board of the vessel.

Deserter concealed on board merchant vessel through negligence of master.

This stringent provision, which was not in the Code as originally prepared, is taken from an Act directed against the mischief and loss to the Government occasioned by the encouragement given to desertion by the Masters of Merchant vessels. The Section enacts as a part of the definition of an offence what, at the most, is only evidence of an offence. When a deserter is found "concealed" on board a vessel, it is not unreasonable to presume that the Master, or person in charge, knows that he is there, and that he harbours the deserter. If the Master can satisfactorily rebut this presumption by proving that he really knew nothing of the matter, it seems just to allow him to do so; but, according to this provision, his ignorance, however honest, will not save him if there has been "neglect of duty" or "want of discipline" on board,—vague expressions, the proof or disproof of which are equally difficult.

138. Whoever abets what he knows to be an act of insubordination by an officer, soldier, or sailor, in the Army or Navy of the Queen, shall, if such act of insubordination be committed in consequence of that abetment, be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Abetment of act of insubordination by a soldier or sailor.

Provision is only made for those cases of abetment which are actually followed by acts of insubordination. In the present Section, it is expressed as part of the definition of the offence that the abettor knows the quality of the

act abetted, that is, he knows it to be an act of insubordination. The expression "act of insubordination" is not, as it appears, used in the Mutiny Acts or in the Articles of War, and it seems to have no definite meaning. Conduct of a like nature with that which, when carried to an actual resistance to superior military authority, amounts to mutiny, must, when not carried to such a length, be held to be "insubordinate." Any wilful breach of discipline by a soldier or sailor will constitute an act of insubordination within the meaning of this Clause.

139. No person subject to any Articles of War for the Army or Navy of the Queen, or for any part of such Army or Navy, is subject to punishment under this Code for any of the offences defined in this Chapter.

Persons subject to Articles of War not punishable under this Code.

The remarks already made, sufficiently explain under what laws such persons are subject to punishment.

140. Whoever, not being a soldier in the Military or Naval service of the Queen, wears any garb or carries any token resembling any garb or token used by such a soldier, with the intention that it may be believed that he is such a soldier, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred Rupees, or with both.*

Wearing the dress of a soldier.

This Section, assuming that soldiers only and not sailors wear a distinguishing dress, accoutrements, &c., provides a punishment for those who personate soldiers. No fraudulent intention is made a part of the definition. An innocent assumption of this character, if it must be deemed an offence, is

* The offence of purchasing, &c., arms, ammunition, cloth, Military accoutrements, forage, &c., from a soldier, is punishable by the Annual Mutiny Act.

one which will probably be thought deserving of a lenient sentence. A section to the effect mentioned in the note to p. 117 will be found in the Annual Mutiny Act.

CHAPTER VIII.

OF OFFENCES AGAINST THE PUBLIC TRAN- QUILLITY.

These offences hold a middle place between State offences on the one hand, and crimes against person and property on the other. Many of the offences made punishable by other Chapters of the Code involve in their commission a disturbance of the public peace. But the present Chapter punishes especially unlawful assemblies of persons who, whether they assemble tumultuously or otherwise, have a common unlawful purpose in their minds, the execution of which will disturb public order and excite alarm.

The essence of these offences is the *unlawful assembly*. This is more or less aggravated by other circumstances which attend or follow it,—as the being armed, the making preparations to execute the common unlawful object, or the actual execution of such object. But there must be an unlawful assembly. Merely conspiring together, by writing or other means of correspondence, without any meeting, is not therefore the offence hereby made punishable.

The Chapter of General Exceptions should be carefully borne in mind, especially the exceptions concerning acts done by the direction of public servants, or in the exercise of the right of private defence, &c. A gathering of persons for objects such as those contemplated by the above exceptions would of course not be unlawful.

141. *An assembly of five or more persons is designated as an “unlawful assembly,” if the common object of the persons composing that assembly, is—

First. To overawe by criminal force, or show of criminal force, the Legislative or Executive Government of India, or the Government of any Presidency, or any Lieutenant-Governor, or any Public Servant in the exercise of the lawful power of such Public Servant; or

Second. To resist the execution of any law, or of any legal process; or

Third. To commit any mischief or criminal trespass, or other offence; or

Fourth. By means of criminal force, or show of criminal force, to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or

Fifth. By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

Explanation. An assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly.

“The common object of the persons composing that assembly” &c. The five or more persons met together must have in view a common unlawful object of the description specified. Whether the object is in their minds when they come together, or whether it occurs to them afterwards, is not material. But it is necessary that the object should be common to the persons who compose the assembly, that is, that they should all be aware of it and con-

* By an error of the press some copies of the Code have “An assembly or five persons” &c.

cur in it. It seems also that there must be some present and immediate purpose of carrying into effect the common object ; and that a meeting for deliberation only, and to arrange plans for future action, is not an " unlawful assembly."

" *First.* To overawe" &c. A person kept by superior influence in awe, so that he fears to do that which he has a mind and will to do, and which the law empowers him to do, is overawed. But the common object which makes an assembly " unlawful" is an intent to overawe, by or by show of criminal force. (See Sections 349, 350). The Court must determine upon view of the whole facts, not whether a public servant has in fact been overawed, but whether the assembly had that end in their minds as the common object of their meeting.

The *Second* and *Third* objects do not require to be noticed. Mischief is defined by Section 425, Criminal Trespass by Section 441. The word " offence" means a thing made punishable by this Code. (Section 40).

Fourth and *Fifth.* " By means of criminal force" &c. Here, as in the first instance, a necessary part of the common object is that it should contemplate " force or show of force," as the means to be used to carry the object into effect. The cases coming under these two heads are not necessarily, and apart from the use of force, of a criminal nature ; for the right may actually be on the side of those, or some of those, who compose the unlawful assembly. It is the use of force or show of force in the attempt to recover what may be justly their property that brings the persons assembled within the definition.

The greater part of the fourth clause relates to the forcible dispossession of property. Moveable property seems to come within the terms used, and may perhaps be within the contemplation of the clause. What shall amount to possession of property whether moveable or immoveable, is a matter which the civil law must determine. For the present purpose, it will not be difficult to determine what is that possession of land which it is the common object of an unlawful assembly to take or

obtain. The first and usual case is where the common purpose is to take possession of property by dispossessing the present actual occupant. Where the property is in the actual possession of no person, the possession being vacant,—as in the case of a deserted or unoccupied house, or a newly formed chur upon which no acts of ownership have been exercised, and which, from its position does not become by law annexed to any particular property,—an assembly of persons whose common object is to obtain possession by force or show of force to be used against others who are prepared to resist them, is unlawful whether the property rightfully belongs to the persons or any of the persons assembled or not.

“Or to deprive, &c.” Property is frequently subject to certain rights or privileges which may be exercised over it by those who have lands adjacent to it and by others, such as rights of way, rights of common or pasturage, rights of fishing, &c. Such rights are known to the English law as “incorporeal” rights. And as they consist, not in the actual possession of tangible property, but in the enjoyment or use of the way or other right, the word possession as applied to them means only the undisturbed use and exercise of the privilege. An assembly, with the common intent forcibly to interfere with or prevent the enjoyment of the right, is unlawful. So likewise is it, where the common purpose is to enforce such a privilege on behalf of the person who has or claims it. Thus, A having enclosed certain land, B and four or more persons assemble with a common intent to enforce a right or supposed right claimed by B, that his cattle should pass over the land enclosed, to be watered. This is an unlawful assembly, although A may have unjustly deprived B of his lawful right by the enclosure of the land.

The words “any right or supposed right” may also extend to a right unconnected with immoveable property, though they seem from the context to be meant especially to include rights connected with land.

The fifth clause seems comprehensive enough to apply to all the rights a man can possess, whether they concern the enjoyment of property or not. Whatever thing a man may lawfully do or omit to do at his choice, the law will not allow that he shall be compelled to do or prevented from doing that thing by force or show of force. And an assembly of those who intend so to compel or prevent him is unlawful, whether the object concerns land (e. g. to compel a person to sow or not to sow his land with a particular crop), or is distinct from the land, (e. g. to prevent a religious procession, or to deter a person from marrying under the provisions of Act XV. of 1856, or to compel a person or persons to go to a new market or to keep away from an old one).

142. Whoever, being aware of facts which render
 Being a member of an un- any assembly an unlawful as-
 lawful assembly. sembly, intentionally joins that
 assembly, or continues in it, is said to be a member
 of an unlawful assembly.

The previous Section having explained what an unlawful assembly is, this Section declares who may be said to be a member of such an assembly. The persons who meet together may not at first be five in number or may not have when they first assemble any such "common object" as makes their meeting unlawful. In either case as soon as five or more are met together and entertain a common unlawful object, they constitute an unlawful assembly. And as soon as other persons, whether present from the beginning or afterwards joining the assembly, become informed of the common object and adhere to it ("intentionally join" &c.,) they also are members of an unlawful assembly.

143. Whoever is a member of an unlawful assem-
 Punishment. bly, shall be punished with
 imprisonment of either description for a term which
 may extend to six months, or with fine, or with
 both.

There are several degrees of criminality in the offences subsequently made punishable, but the point of the offence in each case is that which is here made punishable, viz. the unlawful assembly.

144. Whoever, being armed with any deadly weapon, or with any thing which, Joining an unlawful assembly armed with any deadly weapon. used as a weapon of offence, is likely to cause death, is a member of an unlawful assembly, shall be punished with imprisonment of either description, for a term which may extend to two years, or with fine, or with both.

The risk to the public tranquillity—and therefore the offence,—is aggravated by the intention of using force evinced by carrying arms. “Weapon of offence,” i. e. a weapon which under present circumstances and at the present time (during the existence of the unlawful assembly), is an offensive weapon,—notwithstanding that it might be otherwise at a different time and place. The occasion and the persons must determine this.

145. Whoever joins or continues in an unlawful assembly, knowing that such Joining or continuing in an unlawful assembly knowing that it has been commanded to disperse. unlawful assembly has been commanded in the manner prescribed by law to disperse, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

If the offender still resolves, in defiance of this warning, to persevere in the commission of an offence, he aggravates his crime and incurs a more severe punishment. The mode of giving this warning seems to be left for the Code of Criminal Procedure, or for future distinct legislation.

146. Whenever force or violence is used by an Force used by one member in prosecution of common object. unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every

member of such assembly is guilty of the offence of rioting.

The unlawful assembly having moved towards the execution of its common object, and having used force, has committed the higher offence of rioting. It will be noticed that the *actual use* of force, and not merely a show of force, is necessary, and that the force must be in the prosecution of the common object. And in this case whether only one, or more than one, of the persons assembled use the force, the penal consequences apply equally to all. It will be otherwise, however, if the force or violence is used for a distinct purpose,—as if it consist of a mere affray or assault upon each other, or upon bystanders, by some members of the assembly.

It has been thought necessary, in a subsequent Chapter of offences affecting the Human Body, to explain what is meant by the words “to use force” (Section 349). But that explanation is merely for the purpose of defining the offences of Criminal Force, and Assault: it is not a General Explanation like those given in the 2nd Chapter, nor is it, of itself, a definition of an offence. The words “use force,” in the present Section, must therefore, it seems, be construed without reference to the explanation given in Section 349.

147. Whoever is guilty of rioting shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

148. Whoever is guilty of rioting, being armed with a deadly weapon, or with any thing which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

149. If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or

Every member of an unlawful assembly to be deemed guilty of any offence committed in prosecution of common object.

such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.

Violence used by one member of an unlawful assembly, in prosecution of the common object makes all the members rioters (Section 146). In like manner, any offence which he commits in prosecution of the common object becomes the offence of all. And further, if he commit an offence which, although it cannot be said to be committed in prosecuting the common object, is yet such an offence as was likely to be committed, all are deemed to be participators in his guilt.

The nature and object of the assembly must determine what acts done and what offences committed by any one of its members become, under this section, the acts and offences of the whole body. Minor offences against person and property are the common and natural consequences of a tumultuous gathering of persons with evil intentions. And grave offences of a like nature may equally be the probable result where the common object is one which implies violence. But there is a limitation to this law extending to many persons the actual guilt of one, which seems reasonable and consistent with the terms in which the Section is expressed, viz. that the offence, if wholly beside the common object, is not to be imputed to the whole assembly.

150. Whoever hires or engages, or employs, or promotes or connives at the hiring, engagement, or employment, of any person to join or become a member of any unlawful assembly, shall be punishable as a member of such unlawful assembly, and for any offence which may be committed by any such person as a member of such unlawful assembly, in pursuance of such hiring, engagement, or employment, in the same manner as if he had been a member of such unlawful assembly, or himself had committed such offence.

Hiring or conniving at hiring of persons to join an unlawful assembly.

Affrays attended by much violence, and occasionally ending in death, are committed in some parts of India by persons either hired or employed for such work alone, or who are not or may not be ordinarily retainers or labourers in the service of the persons hiring them. The object of this Section seems to be to bring within reach of the law, those who are really the originators and instigators of the offences committed by such persons. The ordinary law of abetment might be sufficient to punish those who, by hiring or engaging others, instigate them to join an unlawful assembly. But if the prime agent keeps aloof, and the work of hiring, although known to him, is left entirely to his managers or servants, he will probably succeed in evading the ordinary law. The terms of this Section therefore extend not only to acts of instigation by the master, but to acts of instigation when done by others (his agents,) and knowingly permitted, or connived at, by him.

To support a charge under this Section, there must be proof—(1.) of an unlawful assembly; (2.) of an offence (if an offence was committed by the members of that assembly); (3.) of the complicity, by hiring, connivance or otherwise, of the person charged. Direct evidence of hiring, &c., may not often be procurable; and it will be still more difficult to obtain such evidence where the charge is one of promoting the hiring or conniving at it. The relation of the parties, their conduct, and the circumstances generally, must furnish grounds of presumptive proof in such cases.

151. Whoever knowingly joins or continues in any assembly of five or more persons likely to cause a disturbance of the public peace, after such assembly has been lawfully commanded to disperse, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Explanation. If the assembly is an unlawful assembly within the meaning of Section 141, the offender will be punishable under Section 145.

The offence consists not in any unlawful assembly, for there may be none, but in the disobedience to the mandate of the law, which, under the particular circumstances indicated here, has ordered the assembly to disperse. Suppose five or more persons meet together on a lawful occasion: a command to them to disperse would not be a lawful command, and the offence here contemplated would not be committed. But if the time and place of assembly make it likely that a disturbance of the public peace will be caused, the disobedience to the command to disperse constitutes the offence hereby made punishable. If two persons are quarrelling in a public place, an assembly of five or more, composed of these persons and of bystanders, appears one likely not only to cause obstruction, but a disturbance of the public peace: and knowingly to join or continue in such an assembly after the order to disperse, may be an offence.

152. Whoever assaults or threatens to assault, or obstructs or attempts to obstruct, any public servant in the discharge of his duty as such public servant, in endeavouring to disperse an unlawful assembly, or to suppress a riot or affray, or uses, or threatens, or attempts to use criminal force to such public servant, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Assaulting or obstructing public servant when suppressing riot, &c.

The powers and duties of public servants in the suppression of affrays, &c., are not contained in this Code. They belong to the Code of Criminal Procedure or to a distinct law.

The offence of assault is defined by Section 351. Knowledge of the fact that the person obstructed is a public servant, although it is not expressed in the definition, no doubt forms part of this offence.

153. Whoever malignantly or wantonly, by doing any thing which is illegal, gives provocation to any person,

Wantonly giving provocation, with intent to cause riot.

intending or knowing it to be likely that such provocation will cause the offence of rioting to be committed,

If rioting be committed. If rioting be committed, shall, if the offence of rioting be committed in consequence of such provocation, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both; and if the offence of

If not committed. If rioting be not committed, with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

The provocation to riot must be given by an "illegal" act (see Section 43). Not only must the provocation be by an illegal act, but it must be given wantonly and without excuse; and, moreover, there must be the intention to cause, or guilty knowledge of, the probable consequences. These ingredients being present, the punishment varies according as the probable consequences actually ensue or not.

154. Whenever any unlawful assembly or riot takes place, the owner or occupier of the land upon which such unlawful assembly is held, or such riot is committed, and any person having or claiming an interest in such land, shall be punishable with fine not exceeding one thousand Rupees, if he or his agent or manager, knowing that such offence is being or has been committed, or having reason to believe it is likely to be committed, do not give the earliest notice thereof in his or their power to the principal officer at the nearest Police station, and do not, in the case of his or their having reason to believe that it was about to be committed, use all lawful means in his or their power to prevent it, and in the event of its taking place, do not use all lawful means in his or their power to disperse or suppress the riot or unlawful assembly.

Many duties of police are by law imposed on landholders. The present Section proceeds apparently upon a presumption

that, in addition to any such duty, the owner or occupier of land is cognizant in a peculiar way of the designs of those who assemble on his land, and is able not only to give the police notice, but also to prevent and to disperse and suppress the assembly. It seems that an absent and non-resident owner may be made liable under this Section for the misconduct of his local agents.

The difficulty of proving the complicity of landholders and others in affrays and outrages connected with the occupation of land, committed by hired agents, probably rendered necessary the introduction into the Code of the four following Sections. It will be noticed that circumstances which are in truth only evidence (as reasonable grounds for presuming a guilty knowledge or connivance) of an offence, become in these Sections part of the definition of an offence.

155. Whenever a riot is committed for the benefit
Liability of person for whose benefit a riot is committed. or on behalf of any person who is the owner or occupier of any land respecting which such riot takes place, or who claims any interest in such land, or in the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom, such person shall be punishable with fine, if he or his agent or manager, having reason to believe that such riot was likely to be committed, or that the unlawful assembly by which such riot was committed was likely to be held, shall not respectively use all lawful means in his or their power to prevent such assembly or riot from taking place, and for suppressing and dispersing the same.

See the note to Section 150. The principle on which this and the following Section proceed is to subject to fine, all persons in whose interest an affray is committed and the agents of such persons, unless it can be shewn that they did what they lawfully could do to prevent the offence. The sub-

ject of dispute whether land, water, fisheries, crops or other produce of land, markets, &c., or the right to use land, &c., must be one which the person charged under this Section either owns, or occupies, or lays claim to, whether he has any lawful interest therein or not. To support the charge there must be proof of the riot, and of those circumstances which lead to the inference that it was committed in the interest (and therefore, presumably, at the instigation) of the person charged. It is also essential to establish by direct or presumptive proof a knowledge or reason for belief that the offence would probably be committed. Usually, where the means of knowing are shown to exist, it will not be unreasonable to presume knowledge.

As to the proof of the matters mentioned in the latter part of the Section ("the use of all lawful means of prevention," &c.), it is to be observed that in general the law supposes that every person acts legally, and does what he is required by law to do. If therefore a man is charged with omitting to do what the law enjoins, he who brings the charge must prove this omission. But there is another rule, which seems to be applicable here, which requires that facts so peculiarly within the knowledge of a person that he can have little or no difficulty in being put to the proof of them shall be proved by him. Probably therefore the accused will be bound to undertake the proof of the measures employed by him, in order to exempt himself from liability to fine under this Section.

The amount of fine to which the offender is, under this Section, liable is unlimited. It will be borne in mind that in such cases it is provided that the sum to which a fine may extend shall not be excessive, (Section 63).

156. Whenever a riot is committed for the benefit or on behalf of any person who is the owner or occupier of any land respecting which such riot takes place, or who claims any interest in such land, or in the subject of any dispute which

Liability of agent of owner or occupier for whose benefit a riot is committed.

gave rise to the riot, or who has accepted or derived any benefit therefrom, the agent or manager of such person shall be punishable with fine, if such agent or manager, having reason to believe that such riot was likely to be committed, or that the unlawful assembly by which such riot was committed was likely to be held, shall not use all lawful means in his power to prevent such riot or assembly from taking place and for suppressing and dispersing the same.

See the note to the preceding Section. The agent or manager is here made punishable by fine under the like circumstances. The amount of the fine is here also unlimited. These two Sections contain the only instances throughout the Code in which fine unlimited is the sole punishment.

157. Whoever harbours, receives, or assembles, Harbouring persons hired for an unlawful assembly. in any house or premises in his occupation or charge, or under his control, any persons, knowing that such persons have been hired, engaged, or employed, or are about to be hired, engaged, or employed, to join or become members of an unlawful assembly, shall be punished with imprisonment of either description for a term that may extend to six months, or with fine, or with both.

See note to Section 150. The mere collection and harbouring of any number, however small, of persons of the class there referred to, subjects the person harbouring them, to punishment, if he knows the business for which they are, or are about to be, engaged.

There must be proof that the persons harboured are employed, or about to be employed, for the purpose mentioned; and that they are received in some place of reception, (whether a house, out-house or other place) in the possession or charge of the accused person, or under his control;—as if he directs, or permits, his servants &c., to receive them into their houses. A knowledge of the purpose for which the persons are or are

about to be employed, must also be shewn either by direct proof or otherwise. The mere fact of harbouring such persons, connected with circumstances shewing that some right concerning adjacent land, &c., is in violent dispute, would probably be sufficient presumptive evidence.

158. Whoever is engaged or hired, or offers or
Being hired to take part in an unlawful assembly or riot. attempts to be engaged or hired, to do or assist in doing any of the acts specified in Section 141, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both; and whoever, being so engaged or hired

Or to go armed. as aforesaid, goes armed, or engages or offers to go armed, with any deadly weapon or with any thing which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

159. When two or more persons, by fighting in
Affray. a public place, disturb the public peace, they are said to

“commit an affray.”

160. Whoever commits an affray, shall be punished
Punishment for committing affray. with imprisonment of either description for a term which may extend to one month, or with fine which may extend to one hundred Rupees, or with both.

An assault may be committed in private where it cannot cause general terror or alarm; it is therefore treated specially as an offence against the person of an individual. (See Sections 350, 351.) But an affray is an offence against the public peace because it is committed in a public place and is likely to cause general alarm and disturbance.

If a number of persons meet together at a fair or market, or upon any other lawful or innocent occasion, and there arises a sudden quarrel or fighting, the design of the meeting being lawful, and the breach of the peace happening without any

previous intention,—only those persons who actually engage in the fight are guilty of an affray: the other persons present cannot be charged with this or any other offence under the present chapter.

Mere quarrelsome words or gestures used by two or more persons, or preparations made by them for fighting, will not constitute an affray. To support a charge of affray there must be proof of the fighting, and that it was in or adjacent to a public road, street, &c., or in some other public place.

CHAPTER IX.

OF OFFENCES BY OR RELATING TO PUBLIC SERVANTS.

The line drawn between public servants and the great mass of the community will be found to include in the former class a numerous body comprehending not only all persons in the Government service, but other persons who come under any public obligation or any duty to serve the public. See Section 21.

Some of the offences which this Chapter and those which follow it, are intended to reach, are of such a description that they can be committed by public servants alone. Others are of a description which relate to public servants, though not committed by them; such as a private person taking a present to induce a public servant to act corruptly, or personating or wearing the garb of a public servant.

Those offences which are common between public servants and other members of the community are left to the general provisions of the Code.

Certain malpractices and transgressions of public servants, which they alone can commit and which deserve punishment,

are not provided for in the Code. Probably it was supposed that they would be most fitly punished by simple dismissal from the public service.

161. Whoever, being or expecting to be a public servant, accepts or obtains, or agrees to accept, or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act, or for showing or forbearing to show, in the exercise of his official functions, favor or disfavor to any person, or for rendering or attempting to render any service or disservice to any person, with the Legislative or Executive Government of India, or with the Government of any Presidency or with any Lieutenant-Governor, or with any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Explanation. "Expecting to be a public servant." If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will then serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this Section.

"Gratification." The word "gratification" is not restricted to pecuniary gratifications, or to gratifications estimable in money.

"Legal remuneration." The words "legal remuneration" are not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government which he serves to accept.

"A motive or reward for doing." A person who receives a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done, comes within these words.

Illustrations.

(a) A, a Moonsiff, obtains from Z, a banker, a situation in Z's bank for A's brother, as a reward to A for deciding a cause in favor of Z. A has committed the offence defined in this Section.

(b) A, holding the office of Resident at the Court of a subsidiary power, accepts a lakh of Rupees from the minister of that power. It does not appear that A accepted this sum as a motive or a reward for doing or forbearing to do any particular official act, or for rendering or attempting to render any particular service to that power with the British Government. But it does appear that A accepted the sum as a motive or a reward for generally showing favor in the exercise of his official functions to that power. A has committed the offence defined in this Section.

(c) A, a public servant, induces Z erroneously to believe that A's influence with the Government has obtained a title for Z, and thus induces Z to give A money as a reward for this service. A has committed the offence defined in this Section.

"Legal remuneration." What is given to him by the Government which he serves, or by any person having authority from that Government to give,—or what is given to him by any person whomsoever, if the Government permits him to accept the gift,—is comprehended under this expression.

"A motive or reward for doing." This explanation appears to be intended to guard against such an excuse as if a public servant were to endeavour to justify his acceptance of a gift or bribe by urging that the order passed by him was nevertheless a just one and against the very person from whom he received the bribe.

Suppose A, a public servant, has done B some service, and B makes him a present for such past service. In this case is a reward for past service an offence? Not if the present falls within the terms of the definition of legal remuneration. If, for instance, A is permitted by the Government which he serves, to accept the present, he commits no offence. But if the service done, was such as he was bound to render officially without any remuneration, or if it was such as he ought not to have rendered, A's acceptance of a present at any time would certainly be an offence. What is forbidden (speaking generally) is the receiving a gratification "as a motive" to do, or

as "a reward" for having done, any such thing as is described in the definition.

162. Whoever accepts, or obtains, or agrees to accept, or attempts to obtain, from any person, for himself or for any other person, any gratification whatever as a motive or reward for inducing, by corrupt or illegal means, any public servant to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favor or disfavor to any person, or to render or attempt to render any service or disservice to any person with the Legislative or Executive Government of India, or with the Government of any Presidency, or with any Lieutenant-Governor, or with any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

163. Whoever accepts or obtains, or agrees to accept, or attempts to obtain, from any person, for himself or for any other person, any gratification whatever as a motive or reward for inducing, by the exercise of personal influence, any public servant to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favor or disfavor to any person, or to render or attempt to render any service or disservice to any person with the Legislative or Executive Government of India, or with the Government of any Presidency, or with any Lieutenant-Governor, or with any public servant, as such, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Illustration.

An advocate who receives a fee for arguing a case before a Judge ; a person who receives pay for arranging and correcting a memorial addressed to Government, setting forth the services and claims of the memorialist ; a paid agent for a condemned criminal, who lays before

the Government statements tending to show that the condemnation was unjust ; are not within this Section, inasmuch as they do not exercise or profess to exercise personal influence.

164. Whoever, being a public servant, in respect of whom either of the offences defined in the last two preceding Sections is committed, abets the offence, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Punishment for abetment by public servant of the offences above defined.

Illustration.

A is a public servant. B, A's wife, receives a present as a motive for soliciting A to give an office to a particular person. A abets her doing so. B is punishable with imprisonment for a term not exceeding one year, or with fine, or with both. A is punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

This is one of the express provisions made by the Code for the punishment of abetment which are referred to by Section 109, and other Sections of the Chapter of Abetment. It will be observed that Sections 162 and 163 extend to attempts to obtain, &c.

The taking of presents by public servants *with a corrupt motive* is a crime which ought to be made cognizable and punishable by the Criminal Courts. But the mere taking of presents by public servants when such presents are not corruptly taken is not a matter for punishment. The law, however, because of the difficulty of proving what is so little palpable as a corrupt motive, seizes upon one material circumstance of evidence of an offence, and enacts it as a definition of an offence itself.

165. Whoever, being a public servant, accepts or obtains, or agrees to accept or attempts to obtain, for himself, or for any other person, any valuable thing, without consideration, or for a consideration which he knows to be inadequate from any

Public servant obtaining any valuable thing, without consideration, from a person concerned in any proceeding or business transacted by such public servant.

person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by such public servant, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Illustrations.

(a) A, a Collector, hires a house of Z, who has a settlement case pending before him. It is agreed that A shall pay fifty Rupees a month, the house being such that, if the bargain were made in good faith, A would be required to pay two hundred Rupees a month. A has obtained a valuable thing from Z without adequate consideration.

(b) A, a Judge, buys of Z, who has a cause pending in A's Court, Government Promissory Notes at a discount, when they are selling in the market at a premium. A has obtained a valuable thing from Z without adequate consideration.

(c) Z's brother is apprehended and taken before A, a Magistrate, on a charge of perjury. A sells to Z shares in a bank at a premium, when they are selling in the market at a discount. Z pays A for the shares accordingly. The money so obtained by A is a valuable thing obtained by him without adequate consideration.

The proceeding or business must be one for transaction by the public servant,—or if not for transaction by himself personally, it must have some connection with the official functions of himself or of a public servant to whom he is subordinate. These expressions seem wide enough to comprise every step connected with the progress of any proceeding or business through a Court or public office, as well those which are conducted mainly by subordinate hands, as those which come under the immediate direction of the official superior.

Persons who stand in such a relative position to each other as is contemplated in this Section, commit no offence within its terms if they have *bonâ fide* dealings together touching the buying or selling of any thing. Such a practice as the sale or purchase by a public servant, even at a full and fair price, to or from a person who is a suitor, or has other business for trans-

action before him, is not to be encouraged, even if to be tolerated. But this Section provides no penalty for any such case. Its provisions are applicable only when a valuable thing is accepted or obtained "without consideration, or for a consideration which the public servant knows to be inadequate."

166. Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will, by such disobedience, cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Public servant disobeying a direction of the law, with intent to cause injury to any person.

Illustration.

A, being an officer directed by law to take property in execution, in order to satisfy a decree pronounced in Z's favor by a Court of Justice, knowingly disobeys that direction of law, with the knowledge that he is likely thereby to cause injury to Z. A has committed the offence defined in this Section.

The conduct of many classes of public servants in the discharge of their official duties is regulated not merely by orders received directly from their superiors, but by laws, which prescribe the course of proceeding to be followed. Such laws, whether they relate to judicial or to other proceedings, necessarily give a certain latitude of discretion to those whom they are intended to guide.

"Any direction of law." Whether the direction is given by a written law, or whether it is a mandate proceeding from a competent authority which the public servant is bound by law to obey,—as a writ or order for the liberation of a person from prison.

The offence hereby made punishable consists, not in an inadvertent or even careless, but in a corrupt, departure from the direction of the Law. The officer "knowingly disobeys" in order to cause "injury,"—i. e. illegal harm to any person in body, mind, reputation or property, (see Section 44.) There must be

proof of such facts as raise an inference of a wilful disobedience, coupled with the guilty knowledge or intention to injure. A public servant would always be presumed to know the law by which his conduct should be guided. But it would of course be competent to him to shew in mitigation or excuse, that he acted in obedience to the orders of his official superiors and without any intent to injure.

167. Whoever being a public servant, and being,
Public servant framing an incorrect document with intent to cause injury. as such public servant, charged with the preparation or translation of any document, frames or translates that document in a manner which he knows or believes to be incorrect, intending thereby to cause, or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

The intention or knowledge is the essence of the offence. Errors of carelessness or ignorance are not made punishable as offences, even though they may occur in important parts of a document. It must be proved, that the accused person is a public servant charged with the preparation, &c. of the document (proof that he usually has the preparation in fact will in the first instance be sufficient),—that the document is incorrect (his knowledge or belief of this will be presumed until the contrary is proved by him),—and that he had the knowledge or intention to cause injury.

See also as to the liabilities of a translationⁿ who gives a false translation. Section 191, Illustration (e).

168. Whoever, being a public servant, and being
Public servant unlawfully engaging in trade. legally bound, as such public servant, not to engage in trade, engages in trade, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

The obligation not to trade to which this Section refers, is that which arises from some prohibition which has the force of law, or by which a person is "legally bound," (see Section 43.)

"To engage in trade." A person engages in trade who habitually buys and sells with a view to profit. The expression, however, may be intended to bear a wider meaning here, and it will be for the Courts to decide what is included in the term.

It is considered inexpedient to permit Government servants to engage in pursuits by which their time and attention would be diverted from their proper duties. Accordingly no officer, so long as he remains in the actual service of the Government, is permitted to acquire and hold lands for agricultural purposes in any part of India, and there may be other similar or more extensive prohibitions binding on all public servants. But disobedience to the orders of Government in this matter is not, it seems, to be accounted an offence punishable by this Section.

The present provision applies to the punishment of persons who are prohibited by law from engaging in trade. Such a prohibition, for instance, as that contained in Act VIII. of 1855, by which it is declared an offence for any Administrator General to engage in trade, is here meant. The Section can scarcely be deemed to apply where the prohibition is by contract or agreement between the employer and the employed.

There should be proof of the particular prohibition which is applicable; and of the trading, that is the buying and selling as a course of business.

169. Whoever, being a public servant, and being Public servant unlawfully buying or bidding for property. legally bound, as such public servant, not to purchase or bid for certain property, purchases or bids for that property, either in his own name or in the name of another, or jointly or in shares with others, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both; and the property, if purchased, shall be confiscated.

Various laws prohibit officers holding sales of property, and

persons employed by or subordinate to them, from purchasing directly or indirectly any property at such sales.

The precise terms of the law which creates the obligation not to bid should be referred to ; for the prohibition may not be absolute, but only against purchasing at certain sales.

170. Whoever pretends to hold any particular office as a public servant, knowing that he does not hold such office, or falsely personates any other person holding such office, and in such assumed character does or attempts to do any act under color of such office, shall be punished with imprisonment of either description, for a term which may extend to two years, or with fine, or with both.

Personating a public servant.

There are two distinct offences here punished. A may falsely pretend that he has been appointed Darogah of a certain place in the room of Z, deceased ; or he may falsely pretend to be Z, who is the Darogah of that place. In either case, if he does or attempts such an act as that described, he commits the offence. An act is done "under colour" of the office, if it is an act having some relation to the office which he pretends to hold. If it has no relation to the office, as if A, pretending to be a servant of Government, travelling through a district, obtains money, provisions, &c., the offence may amount to cheating under Section 415, but it is not punishable under the present Section.

The offence first described in this clause can, it seems, be committed only where there is in fact such an office in existence. If in consequence of a dispute as to the right to nominate to an office or to remove from an office, it is uncertain who legally fills the office,—a person doing an official act in the assertion of what he honestly believes to be his lawful title to the office, would not be deemed within this Section.

171. Whoever, not belonging to a certain class of public servants, wears any garb or carries any token resembling any garb or token

Wearing garb or carrying token used by public servant with fraudulent intent.

used by that class of public servants, with the intention that it may be believed, or with the knowledge that it is likely to be believed, that he belongs to that class of public servants, shall be punished with imprisonment of either description, for a term which may extend to three months, or with fine which may extend to two hundred Rupees, or with both.

A similar offence, wearing a soldier's dress, is defined and punished by Section 140. It will be noticed that the offence is complete, although no act is done or attempted in the assumed official character. The mere circumstance of wearing such a garb or using such a token, with the intention or knowledge supposed, is sufficient.

CHAPTER X.

OF CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS.

This Chapter contains those penal provisions which are intended to enforce obedience to the lawful authority of public servants. Contempts of the lawful authority of Courts of Justice, of officers of revenue, of officers of police, and of other public servants are punishable under this head. The Civil and Criminal Procedure Codes and other laws make provision for the tribunals empowered to adjudicate in such cases, and for the amount of penalty which each grade of Court or officer is competent to award.

The penalties prescribed in this Chapter for particular offences obstructive of judicial proceedings must not be taken to interfere with other powers possessed by Courts of Justice and public functionaries to enforce their orders. They will not affect other coercive powers of Courts of Justice to compel performance of their orders and decrees, whether by attachment and sale of property, by imprisonment or otherwise. And it

must always be borne in mind that nothing in this Code is intended to repeal or affect any special or local law, (see Sections 5, 41 and 42.)

172. Whoever absconds in order to avoid being served with a summons, notice, or order, proceeding from any public servant legally competent, as such public servant, to issue such summons, notice, or order, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred Rupees, or with both; or, if the summons, notice, or order is to attend in person, or by agent, or to produce a document in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

To constitute the offence described in the first clause of this Section the summons or notice, &c., must be a document actually issued, or at the time of the absconding about to be issued, by a legally authorized public servant. It must be addressed to a particular person, and not be a mere general notification or proclamation intended for the public. And the absconding must be by one who knows or has reason to know that he will be served with the notice, &c., if he does not hide or absent himself. An involuntary absence, as if he is arrested or detained elsewhere by sickness or other just cause, would, of course, be an answer to the charge. So would an absence not originating in the desire to avoid service.

The offence punishable by the latter clause of the Section is aggravated, because the summons, &c. is for attendance in a Court of Justice. (See Section 20.)

173. Whoever in any manner intentionally prevents the serving on himself, or on any other person, of any summons, notice, or order pro-

Preventing service of summons or other proceeding, or preventing publication thereof.

ceeding from any public servant legally competent, as such public servant, to issue such summons, notice, or order, or intentionally prevents the lawful affixing to any place of any such summons, notice, or order, or intentionally removes any such summons, notice, or order from any place to which it is lawfully affixed, or intentionally prevents the lawful making of any proclamation, under the authority of any public servant legally competent, as such public servant, to direct such proclamation to be made, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred Rupees, or with both ; or, if the summons, notice, order, or proclamation is to attend in person, or by agent, or to produce a document in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

Various modes of serving notices, processes, &c., are provided by many laws. In default of personal service, in certain cases, a summons may be affixed in some conspicuous place on the house of the person to be served, or a proclamation may be made.

This Section punishes, as being guilty of an offence, those who interfere with or prevent such modes of service, as well as those who prevent a personal service. No offence is committed unless the intention to obstruct public justice or some public authority exists. If it were once proved, however, that the person accused actually did prevent or interfere with the service, it would lie upon him to show that he did so with no wrong intention.

174. Whoever, being legally bound to attend in person or by an agent at a certain place and time in obedience to a summons, notice, order, or proclamation proceeding from any public servant legally competent, as such public servant, to issue the same, intentionally omits to attend at that place or time, or departs from the place where he is

Non-attendance in obedience to an order from a public servant.

bound to attend before the time at which it is lawful for him to depart, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred Rupees, or with both ; or if the summons, notice, order, or proclamation is to attend in person or by agent in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

Illustrations.

(a) A, being legally bound to appear before the Supreme Court at Calcutta in obedience to a subpoena issuing from that Court, intentionally omits to appear. A has committed the offence defined in this Section.

(b) A, being legally bound to appear before a Zillah Judge, as a witness, in obedience to a summons issued by that Zillah Judge, intentionally omits to appear. A has committed the offence defined in this Section.

The distinction between disobedience to the orders of public servants which relate to judicial proceedings, and disobedience to other orders, is observed. What is included by the words "Court of Justice" which occur in this and the preceding and the following Sections, has been explained by Section 20.

When it is optional with a person to attend or not, or some alternative is offered to him, as if he is to attend in person or by agent, or to attend merely to produce a document, he incurs no penalty by a personal non-attendance, if the order is in substance complied with.

175. Whoever, being legally bound to produce or deliver up any document to any public servant, as such, intentionally omits so to produce or deliver up the same, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred Rupees, or with both ; or, if the document is to be produced or delivered up to a Court of Justice, with simple imprisonment for a term which may ex-

Omission to produce a document to a public servant by a person legally bound to produce such document.

tend to six months, or with fine which may extend to one thousand Rupees, or with both.

Illustration.

A, being legally bound to produce a document before a Zillah Court, intentionally omits to produce the same. A has committed the offence defined in this Section.

Special laws which require the production and delivery of documents, and contain penalties for the omission to produce or other non-compliance with orders relating to them, are not affected by this provision. See Sections 5 and 41.

176. Whoever, being legally bound to give any notice or to furnish informa-

Omission to give notice or information to a public servant by a person legally bound to give notice or information.

tion on any subject to any public servant, as such, intentionally omits to give such notice or to furnish such information in the manner and at the time required by law, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred Rupees, or with both; or, if the notice or information required to be given respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

When there is an obligation imposed by law to furnish information on any subject to a public servant, the penalty which this section provides will apply to any intentional breach of that obligation. Laws relative to different branches of the public revenue, as, for example, the Income Tax Act, require returns to be made, information to be furnished, &c. And by other laws, persons are bound to give notice of various matters to public servants. Such laws will often be found to be excepted from the operation of this code by the 5th section, as being "special laws" or "local

laws" (see Sections 41, 42.) But if they are not within either of those exceptions, the provisions of Section 176 will, it seems, be applicable to punish an intentional omission to give any notice or information required by them.

The omission must be intentional. It is not a negligent, but a wilful omission, that constitutes the offence. An absent landholder to whom the legal obligation applies would not ordinarily be deemed personally liable for the omission of his agent. But the precise terms of the law which imposes the obligation must be consulted to ascertain the limits of his liability. If the law has attached to the tenure of land a certain obligation, the owner cannot evade a performance of his legal duty by absence from his property.

The penalty is increased when the notice or information required relates to an offence or the apprehension of an offender.

See the explanations of the words "legally bound" (Section 43), "public servant" (Section 21), and "offence" (Section 40).

177. Whoever, being legally bound to furnish information on any subject to a public servant, as such, furnishes, as true, information on the subject which he knows or has reason to believe to be false, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both; or, if the information which he is legally bound to give, respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Illustration.

(a) A, a landholder, knowing of the commission of a murder within the limits of his estate, wilfully misinforms the Magistrate of the District that the death has occurred by accident in conse-

quence of the bite of a snake. A is guilty of the offence defined in this Section.

(b) A, a village watchman, knowing that a considerable body of strangers has passed through his village in order to commit a Dacoity in the house of Z, a wealthy merchant residing in a neighbouring place, and being bound, under Clause 5, Section 7, Regulation III. 1821 of the Bengal Code, to give early and punctual information of the above fact to the officer of the nearest Police Station, wilfully misinforms the Police Officer that a body of suspicious characters passed through the village with a view to commit dacoity in a certain distant place in a different direction. Here A is guilty of the offence defined in the latter part of this Section.

See the note to the preceding section : the only difference between the two Sections being that while the one deals with the omission to give information, the other deals with the giving of false information.

178. Whoever refuses to bind himself by an oath to state the truth, when required so to bind himself by a public servant, legally competent to require that he shall so bind himself, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

The explanation of the word "oath" should be referred to (Section 51). The requisition must be by a public servant legally competent to make it, whether the proceeding is a judicial or any other proceeding.

179. Whoever, being legally bound to state the truth on any subject to any public servant, refuses to answer any question demanded of him, touching that subject by such public servant in the exercise of the legal powers of such public servant, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

The offence consists in the refusal to answer a question which is relevant to the subject concerning which the public

servant is authorized to enquire, or which at least touches that subject.

180. Whoever refuses to sign any statement made
 Refusing to sign statement. by him when required to sign that statement by a public servant legally competent to require that he shall sign that statement, shall be punished with simple imprisonment for a term which may extend to three months, or with fine which may extend to five hundred Rupees, or with both.

This section is not, apparently, meant to punish persons who furnish returns or statements which are imperfect by reason of not having been signed: nor does it apply to any case in which the offence is merely non-compliance with a law requiring a statement to be signed. But if a statement made to an officer of justice or other public servant is put into writing, and the public servant being "legally competent to require" a person to sign that statement, does make the request, the refusal to sign under such circumstances constitutes the offence hereby made punishable.

Existing laws require the depositions of witnesses to be subscribed by them. A refusal which can be proved to proceed from a well grounded objection, such as material error or mistake in the writing of the statement, seems not to be punishable. The statement must be such a one as the accused person can be legally required to sign.

181. Whoever, being legally bound by an oath to
 False statement on oath to public servant or person authorized to administer an oath. state the truth on any subject to any public servant or other person authorized by law to administer such oath, makes to such public servant or other person as aforesaid, touching that subject, any statement which is false, and which he either knows or believes to be false, or does not believe to be true, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

This is an offence similar to the offence defined and punished in the following Chapter. The latter Clause of Section 193, appears to include the offence for which the present section provides a punishment. The statement must be, in fact, false, and known or believed to be false, &c., by the person who makes it; and must also be one "touching the subject" regarding which the public servant is authorized by law to administer an oath.

The explanation of the word "oath" should be referred to (Section 51.) Where the law substitutes a solemn affirmation or a declaration, the offence consists in the breach of the legal obligation to state the truth which it imposes.

182. Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause such public servant to use the lawful power of such public servant to the injury or annoyance of any person, or to do or omit any thing which such public servant ought not to do or omit, if the true state of facts respecting which such information is given were known by him, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

False information, with intent to cause a public servant to use his lawful power to the injury of another person.

Illustrations.

(a) A informs a Magistrate that Z, a Police Officer, subordinate to such Magistrate, has been guilty of neglect of duty or misconduct, knowing such information to be false, and knowing it to be likely that the information will cause the Magistrate to dismiss Z. A has committed the offence defined in this Section.

(b) A falsely informs a public servant that Z has contraband salt in a secret place, knowing such information to be false, and knowing that it is likely that the consequence of the information will be a search of Z's premises, attended with annoyance to Z. A has committed the offence defined in this Section.

The wide meaning of the word "injury" should be borne in mind (Section 44.) The intention or knowledge with which the information is given, must determine whether this offence

has been committed or not. An honest intention to promote the ends of justice may cause annoyance or injury, but if the informant acts in good faith he will not be punishable for such annoyance or injury. Where the information, however, is false, and is known or believed by the giver to be so, an honest intent can scarcely exist.

183. Whoever offers any resistance to the taking of any property by the lawful authority of any public servant, knowing or having reason to believe that he is such public servant, shall be punished with imprisonment of either description, for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

Resistance to the taking is punishable when the taking is by lawful authority. As to the right of private defence of property, and the limitations of the right in the case of an act done by a public servant, or by the direction of a public servant, see Sections 97, 99.

184. Whoever intentionally obstructs any sale of property offered for sale by the lawful authority of any public servant as such, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to five hundred Rupees, or with both.

Notices, &c., such as are sometimes given at public sales by persons having, or claiming in good faith to have, a right or interest in the property to be sold, would not be deemed obstructions. But such notices if clearly not *bonâ fide*, and merely for the purpose of injuring the sale, might be so.

185. Whoever, at any sale of property held by the lawful authority of a public servant as such, purchases or bids for any property on account of any person, whether himself or any other, whom

Resistance to the taking of property by the lawful authority of a public servant.

Obstructing sale of property offered for sale by authority of a public servant.

Illegal purchase or bid for property offered for sale by authority of a public servant.

he knows to be under a legal incapacity to purchase that property at that sale, or bids for such property, not intending to perform the obligations under which he lays himself by such bidding, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to two hundred Rupees, or with both.

Public servants unlawfully buying or bidding for property are severely punished by Section 169.

The offence punishable by the present section, or an offence of the like kind, is punishable by existing Regulations.

186. Whoever voluntarily obstructs any public servant in the discharge of his public functions, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred Rupees, or with both.

The obstruction is an offence when it is caused "voluntarily," that is by means intended to cause it, or known to be likely to do so. (See Section 39.)

The offences of assaulting or causing hurt to a public servant in the discharge of his duty are punished by Sections 152, 332, 333 and 353. Threatening a public servant, and insulting or interrupting him in a judicial proceeding, are provided for elsewhere. Sections 189 and 228. The obstruction which is here punished may be by any act voluntarily done or omitted in order to hinder the public servant in executing his duty, although such act is not directed against him personally.

187. Whoever, being bound by law to render or furnish assistance to any public servant in the execution of his public duty, intentionally omits to give such assistance, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend

Omission to assist public servant when bound by law to give assistance.

to two hundred Rupees, or with both ; and if such assistance be demanded of him by a public servant legally competent to make such demand for the purposes of executing any process lawfully issued by a Court of Justice, or of preventing the commission of an offence, or of suppressing a riot or affray, or of apprehending a person charged with or guilty of an offence, or of having escaped from lawful custody, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to five hundred Rupees, or with both.

Persons bound to furnish information to public servants are punished for misconduct by Sections 176 and 177, &c. Persons bound to assist public servants come within the provisions of the present section. The offence in all these cases arises from the breach of some legal obligation on the accused person to give his assistance to a public servant.

188. Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction, shall, if such disobedience causes or tends to cause obstruction, annoyance, or injury, or risk of obstruction, annoyance, or injury, to any persons lawfully employed, be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred Rupees, or with both ; and if such disobedience causes or tends to cause danger to human life, health, or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

Explanation. It is not necessary that the offender should intend to produce harm, or contemplate his

disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce harm.

Illustration.

An order is promulgated by a public servant lawfully empowered to promulgate such order, directing that a religious procession shall not pass down a certain street. A knowingly disobeys the order, and thereby causes danger of riot. A has committed the offence defined in this Section.

There are acts which at one time and place are perfectly innocent, and which at another time or place are proper subjects of punishment. It is not always possible for the legislature to say at what time or at what place such acts ought to be punishable. Disobedience to those local authorities who are empowered to forbid such acts, is by this section made punishable as an offence.

189. Whoever holds out any threat of injury to
Threat of injury to a public servant. any public servant, or to any person in whom he believes that public servant to be interested, for the purpose of inducing that public servant to do any act, or to forbear or delay to do any act, connected with the exercise of the public functions of such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

See Sections 186 and 228.

As to offences against the person of a public servant, see Sections 152, 332, 333, 353.

190. Whoever holds out any threat of injury to
Threat of injury to induce any person to refrain from applying for protection to a public servant. any person for the purpose of inducing that person to refrain or desist from making a legal application for protection against any injury to any public servant legally empowered as such to give such protection, or to

cause such protection to be given, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Mere empty threats, which are often effusions of passion unattended with any fixed purpose of doing harm, should be distinguished from threats really calculated to cause the person to whom they are held out to act otherwise than he would do of his own free will. The word "injury" is explained by Section 44.

CHAPTER XI.

OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.

Many things which interfere with the administration of justice are made punishable in the preceding Chapter of offences relating to contempts of the lawful authority of public servants, and elsewhere in the Code. This Chapter is intended to provide, for certain offences of that description which either do not properly fall within other Chapters, or which call for more severe punishment because committed in order to obstruct public justice. It includes false evidence, and certain other offences against justice.

The authors of the Code thought it inexpedient to use the technical terms of the English law where they did not adopt its definitions and materially departed from it in substance. The offence of attempting to impose on a Court of Justice by false evidence, is therefore not designated in the Code by the word "perjury," which is used in the English law and in the Regulations. For in the Code the definition of this offence is wider in its scope than that which is to be found in the English law, or the Regulations.

191. Whoever being legally bound by an oath or by any express provision of law to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false and which he either knows or believes to be false, or does not believe to be true, is said to give false evidence.

Explanation 1. A statement is within the meaning of this Section, whether it is made verbally or otherwise.

Explanation 2. A false statement as to the belief of the person attesting, is within the meaning of this Section, and a person may be guilty of giving false evidence by stating that he believes a thing which he does not believe, as well as by stating that he knows a thing which he does not know.

Illustrations.

(a) A, in support of a just claim which B has against Z for one thousand Rupees, falsely swears on a trial that he heard Z admit the justice of B's claim. A has given false evidence.

(b) A being bound by an oath to state the truth states that he believes a certain signature to be the handwriting of Z, when he does not believe it to be the handwriting of Z. Here A states that which he knows to be false, and therefore gives false evidence.

(c) A, knowing the general character of Z's handwriting, states that he believes a certain signature to be the handwriting of Z, A in good faith believing it to be so. Here A's statement is merely as to his belief, and is true as to his belief, and therefore, although the signature may not be the handwriting of Z, A has not given false evidence.

(d) A, being bound by an oath to state the truth, states that he knows that Z was at a particular place on a particular day, not knowing any thing upon the subject. A gives false evidence, whether Z was at that place on the day named or not.

(e) A, an interpreter or translator, gives or certifies as a true interpretation or translation of a statement or document which he is bound by oath to interpret or translate truly, that which is not, and which he does not believe to be a true interpretation or translation. A has given false evidence.

192. Whoever causes any circumstance to exist, or makes any false entry in any book or record, or makes any document containing a false statement, intending

Fabricating false evidence.

that such circumstance, false entry, or false statement may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant as such, or before an arbitrator, and that such circumstance, false entry, or false statement, so appearing in evidence, may cause any person who in such proceeding is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding, is said "to fabricate false evidence."

Illustrations.

(a) A puts jewels into a box belonging to Z, with the intention that they may be found in that box, and that this circumstance may cause Z to be convicted of theft. A has fabricated false evidence.

(b) A makes a false entry in his shop book for the purpose of using it as corroborative evidence in a Court of Justice. A has fabricated false evidence.

(c) A, with the intention of causing Z to be convicted of a criminal conspiracy, writes a letter in imitation of Z's handwriting, purporting to be addressed to an accomplice in such criminal conspiracy, and puts the letter in a place which he knows that the Officers of the Police are likely to search. A has fabricated false evidence.

The framers of the Code thus explained the provisions on the subject of fabricating false evidence. "It appears to us that the offence which we have designated as the fabricating of false evidence is not punished with adequate severity under the English and other systems of law. This may perhaps be because the offence, in its aggravated forms, is not one of very frequent occurrence in Western countries. It is notorious, however, that in this country the practice is exceedingly common, and for obvious reasons. The mere assertion of a witness commands far less respect in India than in Europe, or in the United States of America. In countries in which the standard of morality is high, direct evidence is generally considered as the best evidence. In England assuredly it is so considered, and its value as compared with the value of circumstantial evidence is perhaps overrated by the great majority of the population. But in India we have reason to believe that the case is different. A Judge, after he has heard a transaction

related in the same manner by several persons who declare themselves to be eye-witnesses of it, and of whom he knows no harm, often feels a considerable doubt whether the whole from beginning to end be not a fiction, and is glad to meet with some circumstance, however slight, which supports the story, and which is not likely to have been devised for the purpose of supporting the story.

Hence, in England a person who wishes to impose on a Court of Justice knows that he is likely to succeed best by perjury, or subornation of perjury. But in India, where a judge is generally on his guard against direct false evidence, a more artful mode of imposition is frequently employed. A lie is often conveyed to a Court, not by means of witnesses, but by means of circumstances, precisely because circumstances are less likely to lie than witnesses. These two modes of imposing on the tribunals appear to us to be equally wicked, and equally mischievous. It will indeed be harder to bring home to an offender the fabricating of false evidence than the giving of false evidence. But wherever the former offence is brought home, we would punish it as severely as the latter. If A puts a purse in Z's bag, with the intention of causing Z to be convicted as a thief, we would deal with A as if he had sworn that he saw Z take a purse. If A conceals in Z's house a paper written in imitation of Z's hand, and purporting to be a plan of a treasonable conspiracy, we would deal with A as if he had sworn that he was present at a meeting of conspirators at which Z presided."

193. Whoever intentionally gives false evidence in

Punishment for false evi- any stage of a judicial pro-
dence. ceeding, or fabricates false
evidence for the purpose of being used in any stage
of a judicial proceeding, shall be punished with im-
prisonment of either description for a term which may
extend to seven years, and shall also be liable to fine ;
and whoever intentionally gives or fabricates false
evidence in any other case, shall be punished with

imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Explanation 1. A trial before a Court Martial or before a Military Court of Request is a judicial proceeding.

Explanation 2. An investigation directed by law preliminary to a proceeding before a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

Illustration.

A, in an enquiry before a Magistrate for the purpose of ascertaining whether Z ought to be committed for trial, makes on oath a statement which he knows to be false. As this enquiry is a stage of a judicial proceeding, A has given false evidence.

Explanation 3. An investigation directed by a Court of Justice according to law, and conducted under the authority of a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

Illustration.

A, in an enquiry before an Officer deputed by a Court of Justice to ascertain on the spot the boundaries of lands, makes on oath a statement which he knows to be false. As this enquiry is a stage of a judicial proceeding, A has given false evidence.

The giving or fabricating false evidence must always be a grave offence ; but it is an offence of which there are numerous grades, some of which may be easily defined. The Code distinguishes, as will be seen by subsequent sections, between that kind of false evidence which produces great evils, and that kind of false evidence which produces comparatively slight evils. It also marks a difference between the offence of attempting to impose by false evidence on a Court of Justice, and the like offence committed in a proceeding not judicial.

This section provides the ordinary punishments for false evidence in judicial, and in other proceedings ; the former being imprisonment with fine for seven years, the latter for three years.

“Whoever intentionally gives,” &c. To support a charge under this first Clause of the section it is necessary to prove :— 1, The giving of false evidence ; 2, That it is given in a judicial proceeding ; 3, The corrupt intention.

1. The giving, &c. There must be a statement, verbal, written, or otherwise :—the statement must be made under some obligation of law to state the truth, whether an oath or any affirmation or declaration substituted for it in judicial proceedings, and made equivalent to an oath :—and lastly the statement must be false. Where these three things concur, “false evidence” is given.

The falsehood is ordinarily of this kind, that a man states that concerning some fact or thing, which he knows to be false ; or that he states that which he believes to be false. The lie in these cases concerns some thing respecting which the false witness has actual knowledge or belief.

But if he makes some statement touching a matter as to which he has no knowledge, and has formed no belief, the falsehood is of a different kind, but it is equally a falsehood. And such a statement is morally a false statement whether what he has stated chances to be in fact true or not—for it is the knowledge and belief of the declarant that should be considered, and he has stated as truth that which he does not know to be true, or about which he has not formed any belief.

But, according to the definition of the offence of giving false evidence, a person is not punishable by this Code if what he states is true in fact, notwithstanding that he may have no knowledge or belief on the subject when he makes the statement. If indeed his statement goes beyond a bare assertion of the fact, and extends to the falsely asserting that he *knows* or *believes* the fact to be so, as in the case supposed in the illustration (d) to Section 191, this falsehood comes within the legal definition of the offence : for although Z was at the place on the day named, A did not know this, and having sworn that *he did know it*, he has made a false statement concerning his knowledge.

As to the mode in which the lie is told, it is the same whether

the false statement is positively advanced or whether it is only given as the belief of the person making it. But the proof of the offence in the latter case may be more difficult, since not merely the untruth of the fact must be shewn, but also the non-existence of the belief stated touching such fact. If the matter sworn to is one of opinion only, as a medical or scientific opinion, it cannot perhaps be made the foundation of a charge of this sort. Yet if it assert a fact or draw an inference evidently false, as for example, if a doctor swears that a person is unfit to travel who is in perfect health,—or an architect swears that a house is ruined which is in good condition,—the person giving the opinion would probably be criminally liable for such false evidence.

2. The false evidence must be given in a stage of a judicial proceeding. The explanations and illustrations sufficiently show what is a judicial proceeding and what is a stage of such a proceeding.

3. The false evidence must be intentionally given. It will be observed that it is no part of the definition of the offence that the evidence should relate to a thing material to the result of the proceeding. Evidence which is altogether foreign to the subject of the enquiry, and which does not tend to forward the enquiry as bearing directly on the matter in dispute or on the credit of the testimony adduced, may therefore be punished, if false, under the present section. But the corrupt intention to swear falsely must, it seems, exist. In this, as in other cases, the Court may infer the intention from the circumstances. If, having regard to all the circumstances of the case, it appears that the falsehood was not wilful, but rather proceeded from inadvertence or a mistake as to the true nature of the question, the evidence could not be considered to be false evidence intentionally given.

“Or fabricates false evidence for the purpose, &c.” To support a charge under this head it is necessary to prove the intentional fabrication, and that it is for the purpose of being used in some stage of a judicial proceeding.

To "fabricate false evidence" is defined by Section 192. And it must be remembered that an intention to mislead touching a point material to the result of a judicial proceeding is made part of the definition.

To support a charge under the latter clause of the section, the general requisites are the same as those already mentioned, except that the proceeding in this case is not a judicial one. It is equally essential to show that the false statement was one made under the sanction of law, whether upon oath or on a declaration which the law allows to be substituted for an oath in matters not judicial.

194. Whoever gives or fabricates false evidence, intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which is capital by this Code, shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine; and if an innocent person be convicted and executed in consequence of such false evidence, the person who gives such false evidence shall be punished either with death or the punishment hereinbefore described.

Giving or fabricating false evidence with intent to procure conviction of a capital offence.

If innocent person be thereby convicted and executed.

This offence ranks with murder and attempt to murder, according to the result. The offences which the Code makes capital are mentioned at page 33.

195. Whoever gives or fabricates false evidence, intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which by this Code is not capital, but punishable with transportation for life, or imprisonment for a term of seven years or upwards, shall be punished as a person convicted of that offence would be liable to be punished.

Giving or fabricating false evidence with intent to procure conviction of an offence punishable with transportation or imprisonment.

Illustration.

A gives false evidence before a Court of Justice, intending thereby to cause Z to be convicted of a dacoity. The punishment of dacoity is transportation for life, or rigorous imprisonment for a term which may extend to ten years, with or without fine. A, therefore, is liable to such transportation or imprisonment, with or without fine.

196. Whoever corruptly uses or attempts to use
Using evidence known to be false. as true or genuine evidence,
 any evidence which he knows
 to be false or fabricated, shall be punished in the
 same manner as if he gave or fabricated false evidence.

This section applies to those who make use of such evidence as is made punishable by the preceding sections. It relates not only to fabricated evidence but also to such evidence as is given or offered by the mouth of a false witness. It may include also the case of suborning false witnesses and attempting to use their evidence. But a mere inciting others by offers of reward to bear false witness or to fabricate evidence, appears not to fall within these words; there must be a use of or an attempt or offer to use the evidence in a judicial proceeding or on some other occasion. The word "corruptly," which does not occur in the preceding sections, is probably used here to denote that those whose duty it is, not to judge of the credibility of evidence, but to submit it for the consideration of judicial and other functionaries on behalf of their clients, do not incur the penalties of using false evidence.

197. Whoever issues or signs any certificate requir-
Issuing or signing a false certificate. ed by law to be given or sign-
 ed, or relating to any fact of
 which such certificate is by law admissible in evidence,
 knowing or believing that such certificate is false in
 any material point, shall be punished in the same
 manner as if he gave false evidence.

Numerous laws require a certificate of some matter to be given, and many make a certificate admissible as evidence of some fact.

The offence of certifying in any of these and the like cases, knowing or believing that the certificate is false, is put on the same footing as the offence of giving false evidence. But it

will be observed that the certificate must be false in a material point. An error in a name or date, accidental and not intended for any evil purpose, or a false statement of some irrelevant matter, is not within the section. The offence of forging a certificate is not here contemplated, but that of making or issuing a certificate which, being valid and sufficient in other respects, is yet false in a material point. The issuing or signing must therefore be by the person or officer authorised or believed to be authorised to certify. The word "issue" means something different from using. It is the putting forth for the purpose of being used, and is preliminary to it.

198. Whoever corruptly uses or attempts to use
Using as a true certificate
 one known to be false in a ma-
 terial point. any such certificate as a true
 certificate, knowing the same
 to be false in any material
 point, shall be punished in the same manner as if he
 gave false evidence.

See the notes to Sections 196, 197.

199. Whoever, in any declaration made or sub-
False statement made in any
 declaration which is by law re-
 ceivable as evidence. scribed by him, which declara-
 tion any Court of Justice, or
 any public servant or other
 person, is bound or authorized by law to receive as
 evidence of any fact, makes any statement which is
 false and which he either knows or believes to be false,
 or does not believe to be true, touching any point
 material to the object for which the declaration is
 made or used, shall be punished in the same manner
 as if he gave false evidence.

Such declarations as those mentioned in Sections 27, 118, and 164 of the Civil Procedure Code (Act VIII. of 1859) appear to be referred to. Such offences will henceforward be punishable by this Code. See Section 24 of Act VIII. of 1859.

200. Whoever corruptly uses or attempts to use
Using as true any such de-
 claration known to be false. as true any such declaration,
 knowing the same to be false

in any material point, shall be punished in the same manner as if he gave false evidence.

Explanation. A declaration which is inadmissible merely upon the ground of some informality, is a declaration within the meaning of Sections 199 and 200.

The three following sections provide for the punishment of certain offences against public justice by which the detection of crime and the apprehension of offenders is frustrated. It is the duty of every good subject of the State to aid in the due administration of the laws. The discharge of this duty must, in the absence of any direct legal obligation, rest in a great degree upon each man's sense of the duty which lies on him. But by various laws, special duties in regard to the detection of crime are imposed on landholders and certain other persons. All persons, however, if not bound by express provision of law to aid in the detection of offenders, are at least under this legal obligation, that they shall not obstruct or mislead others in the pursuit, if they remain themselves inactive.

Where the offence against public justice proceeds beyond such obstructions and omissions as are made punishable by these sections, and amounts to a harbouring or assisting an offender, it is punishable by subsequent sections of this Chapter.

201. Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false, shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which

Causing disappearance of evidence of an offence committed or giving false information touching it to screen the offender.

If a capital offence.

may extend to seven years, and shall also be liable to

If punishable with transportation. fine; and if the offence is punishable with transportation

for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if the

If punishable with less than ten years' imprisonment. offence is punishable with imprisonment for any term not

extending to ten years, shall be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or both.

Illustration.

A, knowing that B has murdered Z, assists B to hide the body with the intention of screening B from punishment. A is liable to imprisonment of either description for seven years, and also to fine.

Offences of three grades are specified with regard to each of which the offence punishable under this section has its appropriate punishment provided. The substantial fact that some offence has been committed, and the knowledge or reason for belief that an offence has been committed, must of course be proved to the satisfaction of the Court,—since these are both essential parts of the offence here defined. Frequently the apprehension and conviction of the principal offender will remove all doubt concerning the particular offence committed. In such a case only the circumstances remain to be shewn from which knowledge or belief is to be proved or inferred against the person who is charged under the present section. Where the principal offender, by flight or otherwise, has escaped from justice, it will be necessary to satisfy the Court by reasonable proof that some person, whether the person who has fled or another, has committed the offence which the accused is charged with endeavouring to conceal.

The criminal intention to screen the offender from punishment is a necessary part of this offence. Therefore an

accidental or even mischievous effacing of marks, or any thing else done thoughtlessly or in jest, is not sufficient. Footmarks may be effaced, stains of blood washed out, &c., without necessarily incurring the guilt of screening an offender. Suppose a culpable homicide has been committed, and there is merely evidence to show that the accused, a Hindoo, assisted in burning the dead body. This act, being lawful and usual among Hindoos, does not of itself and without the aid of other circumstances in any degree tend to criminate him.

Whether the individual offender is known or unknown to the person charged under this section, he is guilty, if he obstructs the course of justice in the manner indicated.

“Causes any evidence of, &c.” The illustration appended puts the case where a circumstance exists showing that a crime has been committed; the dead body, bearing, it may be supposed, traces of violence, and therefore of itself testifying that an offence has been committed, is hid. As the causing a circumstance to exist which is intended to mislead the judge in the formation of an opinion is a fabrication of false evidence, and is punishable, —so the causing any thing to disappear which tends to the apprehension and conviction of the offender is an offence, when the object is to defeat justice. It is not clear whether these words include (though they appear to do so) all testimony of whatsoever description, such as oral and written testimony, as well as the evidence afforded by the existence of things.

202. Whoever, knowing or having reason to believe that an offence has been committed, intentionally omits to give any information respecting that offence which he is legally bound to give, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Intentional omission to give information of an offence, by a person bound to inform.

This section punishes the illegal omissions of those who are by some law bound to give information, when such omissions

are intentional. The knowledge or belief that some offence has been committed is part of the definition.

203. Whoever, knowing or having reason to believe that an offence has been committed, gives any information respecting that offence which he knows or believes to be false, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

A person who under such circumstances volunteers information which he knows or believes to be false, obstructs justice, and is punished, whether any intention to screen the offender can be proved against him or not, and whatever be the offence which the latter has committed.

204. Whoever secretes or destroys any document which he may be lawfully compelled to produce as evidence in a Court of Justice, or in any proceeding lawfully held before a public servant, as such, or obliterates or renders illegible the whole or any part of such document with the intention of preventing the same from being produced or used as evidence before such Court or public servant as aforesaid, or after he shall have been lawfully summoned or required to produce the same for that purpose, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Whether the proceeding is of a civil or criminal nature, this section applies. The words "document," "Court of Justice," and "public servant," are explained by Sections 20, 21, and 29.

There is no question here of the materiality of the evidence. Whether material or not, it must not be secreted or destroyed to evade production in a judicial or other proceeding, if the production may lawfully be compelled.

205. Whoever falsely personates another, and in such assumed character makes any admission or statement, or confesses judgment, or causes any process to be issued, or becomes bail or security, or does any other act in any suit or criminal prosecution, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

False personation for the purpose of any act or proceeding in a suit. The offence punished, is not merely cheating by using a fictitious name, but by falsely assuming to be some other real person and in that character making an admission, &c.

“Or causes any process to be issued.” These words are applicable to the case of genuine process being issued by the offender in an assumed character; as if he personates A, a creditor of B, and causes a summons in A’s name to issue against B for the recovery of the debt due to A. Suppose a person procures blank forms of summons or other process, and signs them with the signature of the officer of the Court, and afterwards causes them to be issued: this seems to be an offence within this Section. The offence here defined must, it appears, concern some act done “in a civil suit or criminal prosecution.” An intention to injure or defraud is not made part of the definition and therefore need not be proved.

206. Whoever fraudulently removes, conceals, transfers, or delivers to any person any property or any interest therein, intending thereby to prevent that property or interest therein from being taken as a forfeiture or in satisfaction of a fine, under a sentence which has been pronounced, or which he knows to be likely to be pronounced by a Court of Justice or other competent authority, or from being taken in execution of a decree or order which has been made, or which he knows to be likely to be made by a Court of Justice in a Civil suit, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Fraudulent removal or concealment of property to prevent its seizure as a forfeiture or in execution of a decree.

The owner of property is, ordinarily speaking, by virtue of his ownership, free to sell it or to give it away as he sees fit. And all other persons have equally the right to receive it from him by way of purchase or gift. But the law has provided for many offences and contraventions of the law, punishment by fine, or forfeiture of property. Thus by some sections of this Code it is enacted that upon conviction of certain offences the offender shall forfeit all or a portion of his property ; by others it is enacted that such forfeiture may be awarded by the Court as part of the punishment. Laws relating to Customs Duties usually make confiscation of goods the punishment of any contravention of their provisions. And the ordinary sanction of a law is the imposition of a fine for the breach of it,—recoverable usually by distress and sale of the offender's property. In all such cases, and also in the case of civil suits, the general law of the country must determine the legal effect of an ordinary transfer of property while suits or other proceedings are pending, the result of which may establish a claim against or otherwise affect such property.

The penal provision in this section, which does not interfere with those of the civil law concerning the recovery of the property, applies when there is an intention to defraud (see Section 25). A fraudulent removal, concealment, &c., with intent to withdraw property from an impending seizure under process of a Court of law or of some competent authority, is the offence made punishable. This is not only a grave offence against public justice, but a serious injury to the suitor, the object of whose suit is defeated or retarded thereby.

The offence may it seems be committed by persons other than the owners of the property.

207. Whoever fraudulently accepts, receives, or

Fraudulent claim to property to prevent its seizure as a forfeiture or in execution of a decree.

claims any property or any interest therein, knowing that he has no right or rightful claim to such property or interest, or practises any deception touching any right

to any property or any interest therein, intending thereby to prevent that property or interest therein from being taken as a forfeiture or in satisfaction of a fine, under a sentence which has been pronounced, or which he knows to be likely to be pronounced by a Court of Justice, or other competent authority, or from being taken in execution of a decree or order which has been made, or which he knows to be likely to be made by a Court of Justice in a Civil suit, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

See the previous section and note. The receiver of the property, if he receives it with intent to defraud, is here made punishable.

208. Whoever fraudulently causes or suffers a decree or order to be passed against him at the suit of any person for a sum not due, or for a larger sum than is due to such person, or for any property or interest in property to which such person is not entitled, or fraudulently causes or suffers a decree or order to be executed against him after it has been satisfied, or for any thing in respect of which it has been satisfied, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Illustration.

A institutes a suit against Z. Z, knowing that A is likely to obtain a decree against him, fraudulently suffers a judgment to pass against him for a larger amount at the suit of B, who has no just claim against him, in order that B, either on his own account or for the benefit of Z, may share in the proceeds of any sale of Z's property which may be made under A's decree. Z has committed an offence under this Section.

209. Whoever fraudulently or dishonestly, or with intent to injure or annoy any person, makes in a Court of Justice any claim which he knows to be false, shall be punished with imprisonment of either description for

False claim in a Court of Justice.

a term which may extend to two years, and shall also be liable to fine.

Not only must the claim be false within the knowledge of the person making it, but the object if it must be to defraud, to cause wrongful loss or wrongful gain, to injure or to annoy. See Sections 24, 25, and 44. A claim by filing a plaint, or a claim made to property attached before judgment or taken in execution of a decree, are instances of the claims to which this section appears to refer.

It is not an innovation in India to punish a person who has brought a suit for the purpose of annoyance. By the Regulations, a Judge is authorized when a suit appears frivolous, vexatious, or groundless, to fine the plaintiff and to commit him to close custody till he pays the fine.

210. Whoever fraudulently obtains a decree or order against any person for a sum not due or for a larger sum than is due, or for any property or interest in property to which he is not entitled, or fraudulently causes a decree or order to be executed against any person after it has been satisfied, or for any thing in respect of which it has been satisfied, or fraudulently suffers or permits any such act to be done in his name, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

In this and the corresponding Section 208 the intention to defraud is essential.

211. Whoever, with intent to cause injury to any person, institutes or causes to be instituted any criminal proceeding against that person, or falsely charges any person with having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge against that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both; and if such criminal proceeding be instituted

on a false charge of an offence punishable with death, transportation for life, or imprisonment for seven years or upwards, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

The intention to cause *injury*, that is, to cause harm illegally to some person in body, mind, reputation or property (Section 44) is part of this offence.

Where no proceedings are actually instituted, and no false charge is made, a person is punishable under Section 182, who injures or annoys another by giving false information to a public servant, with the intention of causing him to use his lawful powers to cause injury or annoyance.

This Code contains no provisions for the punishment (under these names) of the offence of "subsequent abetment" or of "accessaries after the fact." The offences of persons falling within such descriptions at present are included among offences against Public Justice and are punishable under the next following and subsequent Sections of this Chapter.

212. Whenever an offence has been committed, whoever harbours or conceals a person whom he knows or has reason to believe to be the offender, with the intention of screening him from legal punishment, shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine; and if the offence is punishable with transportation for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if the offence is punishable with imprisonment which may extend to one year and not to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may

Harbouring an offender.

If a capital offence.

If punishable with transportation for life, or with imprisonment.

extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

Exception. This provision shall not extend to any case in which the harbour or concealment is by the husband or wife of the offender.

Illustration.

A, knowing that B has committed dacoity, knowingly conceals B in order to screen him from legal punishment. Here as B is liable to transportation for life, A is liable to imprisonment of either description for a term not exceeding three years, and is also liable to fine.

The Section does not apply to the harbouring of persons, not being criminals, who merely abscond to avoid or delay a judicial investigation; nor, necessarily, to acts of assistance given to known criminals in the shape of money, food, or means of escape, &c. It supposes that *some offence* has actually been committed, and that the harbourer gives refuge—with the intention of screening him from legal punishment—in his house, or in some hiding place, to one whom he knows or has reason to believe to be the offender. The precise offence may be unknown to him. Thus he may not know whether the person harboured has committed theft, or extortion, or robbery; but if he has reason to know that an offence against property has been committed by such person, this Section will apply.

To support the charge the following proof is required.

1. That an offence has been committed. The trial will not usually take place until after the guilt of the principal offender has been ascertained by his conviction; if it takes place before, there must be sufficient proof of some offence committed.

2. The harbouring or concealment of the person of the offender must be proved. A mere receipt of the property plundered, or of the proceeds of it, will not constitute this offence.

3. Knowledge or cause for believing that the person harboured is the offender must also be proved.

The intention to screen from justice would be reasonably inferred from proof of the above circumstances. But of course if the accused can show satisfactorily that he had no intention of screening the offender this will be a good defence.

The section extends to all cases, save the two excepted ones. Thus a master receiving his servant, or a servant his master,—a brother his brother,—a father his son,—will all be subject to punishment. In some of these instances, however, the offence may be deemed deserving of a very light punishment.

The several offences coming within the four classes which are here mentioned will be found at pp. 33—38. If the offence committed is incomplete at the time of the harbouring, as if a blow has been given previously, but death does not ensue until afterwards, it seems that the harbourer is punishable only for the lesser offence.

213. Whoever accepts or attempts to obtain, or agrees to accept, any gratification for himself or any other person, or any restitution of property to himself or any other person, in consideration of his concealing an offence or of his screening any person from legal punishment for any offence, or of his not proceeding against any person for the purpose of bringing him to legal punishment, shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and if the offence is punishable with transportation for life or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if the offence is punishable with imprisonment not extending to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

Taking gift, &c. to screen an offender from punishment.

If a capital offence.

If punishable with transportation for life or with imprisonment.

The compounding of a crime by some agreement not to bring the criminal to justice if the property is restored or a pecuniary

or other gratification (see Section 161,) is given is the offence punished by this and the following Section. Those offences which approach in their nature to civil wrongs admitting of compensation are excepted from these provisions.

214. Whoever gives or causes, or offers or agrees to give or cause any gratification to any person, or to restore or cause the restoration of any property to any person, in consideration of that person's concealing an offence or of his screening any person from legal punishment for any offence or of his not proceeding against any person for the purpose of bringing him to legal punishment, shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and if the offence is punishable with transportation for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if the offence is punishable with imprisonment not extending to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

Exception. The provisions of Sections 213 and 214 do not extend to any case in which the offence consists only of an act irrespective of the intention of the offender, and for which act the person injured may bring a civil action.

Illustrations.

(a) A assaults B with intent to commit murder. Here, as the offence does not consist of the assault only, irrespective of the inten-

tion to commit murder, it does not fall within the exception, and cannot therefore be compounded.

(b) A assaults B. Here, as the offence consists simply of the act, irrespective of the intention of the offender, and as B may have a civil action for the assault, it is within the exception and may be compounded.

(c) A commits the offence of bigamy. Here as the offence is not the subject of a civil action, it cannot be compounded.

(d) B commits the offence of adultery with a married woman. The offence may be compounded.

215. Whoever takes or agrees or consents to take
 Taking gift to help to recover any gratification under pre-
 stolen property, &c. tence or on account of helping
 any person to recover any moveable property of which
 he shall have been deprived by any offence pun-
 ishable under this Code, shall, unless he uses all means
 in his power to cause the offender to be apprehended
 and convicted of the offence, be punished with impri-
 sonment of either description for a term which may
 extend to two years, or with fine, or with both.

This Section is intended for the punishment of persons who, being usually in league with thieves, or well aware of their proceedings, obtain money, &c., for the recovery of stolen property, without making any effort to bring the offenders to justice. In many places, cattle &c., are stolen by persons whose object it is to restore the stolen property to the owner on payment of a reward. The "go between," who is usually in case of cattle stealing a professional tracker, is the person contemplated by this Section. If he aids or instigates the thieves, he is an abettor of theft. But in default of evidence of abetment, if he receives a reward for procuring the restoration of stolen property, without using "all means in his power" to procure the apprehension and conviction of the offender, he is punishable under this Section.

216. Whenever any person convicted of or charged
 Harbours an offender who with an offence, being in law-
 has escaped from custody, or ful custody for that offence,
 whose apprehension has been escapes from such custody, or
 ordered. whenever a public servant, in
 the exercise of the lawful powers of such public

servant, orders a certain person to be apprehended for an offence, whoever, knowing of such escape or order for apprehension, harbours or conceals that person with the intention of preventing him from being apprehended, shall be punished in the manner following, that is to say : if the offence for which the

If a capital offence.

person was in custody or is ordered to be apprehended is punishable with death, he shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine ; if the offence is punishable with transpor-

If punishable with transportation for life or with imprisonment.

tation for life, or imprisonment for ten years, he shall be punished with imprisonment of either description for a term which may extend to three years, with or without fine ; and if the offence is punishable with imprisonment which may extend to one year and not to ten years, he shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of the imprisonment provided for such offence, or with fine, or with both.

Exception. This provision does not extend to the case in which the harbour or concealment is by the husband or wife of the person to be apprehended.

See the note to Section 212. The offence in the present section is aggravated, because the person harboured has escaped after being actually convicted or charged with the offence, or because a warrant or order for his apprehension has issued.

217. Whoever, being a public servant, knowingly disobeys any direction of the

Public servant disobeying a direction of law with intent to save person from punishment or property from forfeiture.

law as to the way in which he is to conduct himself as such public servant, intending thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment,

or subject him to a less punishment than that to which he is liable, or with intent to save, or knowing that he is likely thereby to save any property from forfeiture or any charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

218. Whoever, being a public servant and being, as such public servant, charged with the preparation of any record or other writing, frames that record or writing in a manner which he knows to be incorrect, with intent to cause, or knowing it to be likely that he will thereby cause loss or injury to the public or to any person, or with intent thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture or other charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

219. Whoever, being a public servant, corruptly or maliciously makes or pronounces in any stage of a judicial proceeding, any report, order, verdict, or decision which he knows to be contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

220. Whoever, being in any office which gives him legal authority to commit persons for trial or to confinement, or to keep persons in confinement, corruptly or maliciously commits any person for trial or to confinement, or keeps any person in confinement in the exercise of that authority, knowing that in so doing he is acting

Public servant framing an incorrect record or writing with intent to save person from punishment or property from forfeiture.

Public servant in a judicial proceeding corruptly making an order, report, &c., which he knows to be contrary to law.

Commitment for trial or confinement by a person having authority who knows that he is acting contrary to law.

contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

221. Whoever, being a public servant, legally bound as such public servant, to apprehend or to keep in confinement any person charged with or liable to be apprehended for an offence, intentionally omits to apprehend such person, or intentionally suffers such person to escape, or intentionally aids such person in escaping or attempting to escape from such confinement, shall be punished as follows, that is to say :

Intentional omission to apprehend on the part of a public servant bound by law to apprehend.

Punishment. With imprisonment of either description for a term which may extend to seven years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with or liable to be apprehended for an offence punishable with death; or

With imprisonment of either description for a term which may extend to three years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with or liable to be apprehended for an offence punishable with transportation for life, or imprisonment for a term which may extend to ten years; or

With imprisonment of either description for a term which may extend to two years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for an offence punishable with imprisonment for a term less than ten years.

222. Whoever, being a public servant, legally bound as such public servant, to apprehend or to keep in confinement any person under sentence of a Court of Justice for any offence, intentionally omits to apprehend such person, or intentionally suffers such person to

Intentional omission to apprehend on the part of a public servant bound by law to apprehend a person under sentence of a Court of Justice.

bound as such public servant, to apprehend or to keep in confinement any person under sentence of a Court of Justice

Or, if the person to be apprehended, or rescued or attempted to be rescued, is liable, under the sentence of a Court of Justice, or by virtue of a commutation of such a sentence, to transportation for life, or to transportation, penal servitude, or imprisonment, for a term of ten years or upwards, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

Or, if the person to be apprehended, or rescued or attempted to be rescued, is under sentence of death, shall be punished with transportation for life, or imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

226. Whoever, having been lawfully transported, returns from such transportation, the term of such transportation not having expired, and his punishment not having been remitted, shall be punished with transportation for life, and shall also be liable to fine, and to be imprisoned with rigorous imprisonment for a term not exceeding three years before he is so transported.

227. Whoever, having accepted any conditional remission of punishment, knowingly violates any condition on which such remission was granted, shall be punished with the punishment to which he was originally sentenced, if he has already suffered no part of that punishment, and if he has suffered any part of that punishment then with so much of that punishment as he has not already suffered.

228. Whoever intentionally offers any insult or causes any interruption to any public servant, while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months, or with fine

224. Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself for any offence with which he is charged, or of which he has been convicted, or escapes or attempts to escape from any custody in which he is lawfully detained for any such offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Explanation. The punishment in this section is in addition to the punishment for which the person to be apprehended or detained in custody, was liable for the offence with which he was charged, or of which he was convicted.

225. Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of any other person for an offence, or rescues or attempts to rescue any other person from any custody in which that person is lawfully detained for an offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both ;

Or, if the person to be apprehended, or the person rescued or attempted to be rescued, is charged with, or liable to be apprehended for an offence punishable with transportation for life, or imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine ;

Or, if the person to be apprehended, or rescued or attempted to be rescued, is charged with, or liable to be apprehended for an offence punishable with death, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine ;

Counterfeiting coin.

Explanation.

see Section 28.

shew that the accused person was detected in the act.

of counterfeiting, it will not be sufficient merely to shew that

232. Whoer

Counterfeiting the Queen's coin.

term which may extend to ten years, and shall also be liable to fine.

See the note to the preceding Section. When the coin counterfeited is the Queen's coin, that is coin issued by the Indian Government, English coin, or the coin of a British Colony, or of any other part of the British Dominions (Section 230), the punishment of the offence is made heavier than when the coin is of any other description.

233. Whoever makes, or mends, or performs any part of the process of making or mending, or buys, sells, or disposes of, any die or instrument, for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

When the instrument is a die,—by which the metal is marked so as to resemble a coin and the act of counterfeiting is completed,—or any other instrument appearing by a mark on the face of it to be fit for coining, there can be little doubt of the knowledge of the guilty purpose for which it is intended. But supposing the instrument to be one which is used in other trades,—as the essence of the offence is the guilty knowledge of the purpose for which it is intended, the prosecutor should prove that the act of making or mending, &c., was done with such knowledge.

234. Whoever makes, or mends, or performs any part of the process of making or mending, or buys, sells, or disposes of any die or instrument, for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting the Queen's coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

See the last note. The offence relates to the Queen's coin (Section 230), and is therefore more severely punished.

235. Whoever is in possession of any instrument or material, for the purpose of using the same for counterfeiting coin, or knowing or having reason to believe that the same is intended to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if the coin to be counterfeited is the Queen's coin, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Possession of instrument or material for the purpose of using the same for counterfeiting coin.

The possession of the instrument or material is made an offence only when it is coupled with the guilty purpose or knowledge here specified, which must therefore be established by evidence presumptive to otherwise.

236. Whoever, being within British India, abets the counterfeiting of coin out of British India, shall be punished in the same manner as if he abetted the counterfeiting of such coin within British India.

Abetting in India the counterfeiting out of India of coin.

Of the several modes of abetment (see Section 107), abetment by aid seems the most likely to occur in this case. Any person in India, whether a subject or a foreigner, supplying instruments or materials to persons elsewhere for the purpose of counterfeiting any coin, is punishable. Whether the coin is Queen's coin,—or is a coin, which though current in some parts of India (as the Spanish Dollar) is not a coin coming under the description of Queen's coin,—or is a foreign coin not current in India,—the abetment of the counterfeiting it is punishable under this section.

237. Whoever imports into British India, or exports therefrom, any counterfeit coin, knowing or having reason to believe that the same is counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Import or export of counterfeit coin.

238. Whoever imports into British India, or exports therefrom, any counterfeit coin which he knows or has reason to believe to be a counterfeit of the Queen's coin, shall be punished with transportation for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Import or export of counterfeits of the Queen's coin.

The offence in this and the preceding section consists in an import or export, whether by sea or by land, of any coin known by the importer, &c., or which he has reason to believe, to be counterfeit. The same evidence which would shew that an importer had reason for such a belief would, it seems, also prove a guilty knowledge on his part.

239. Whoever, having any counterfeit coin, which at the time when he became possessed of it he knew to be counterfeit, fraudulently or with intent that fraud may be committed, delivers the same to any person, or attempts to induce any person to receive it, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Delivery to another of coin possessed with the knowledge that it is counterfeit.

The code distinguishes between two different classes of utterers. An utterer by profession, who is the agent employed by the coiner to bring counterfeit coin into circulation, is guilty of a very high offence. Such an utterer stands to the coiner in a relation not very different from that in which a habitual receiver of stolen goods stands to a thief. He makes coining a far

less perilous and a far more lucrative pursuit than it would otherwise be. He passes his life in the systematic violation of the law, and in the systematic practice of fraud in one of its most pernicious forms. He is one of the most mischievous, and is likely to be one of the most depraved of criminals. But a casual utterer, an utterer who is not an agent for bringing counterfeit coin into circulation, but who having heedlessly received a bad rupee in the course of his business, takes advantage of the heedlessness of the next person with whom he deals to pay that bad rupee away, is an offender of a very different class. He is undoubtedly guilty of a dishonest act, but of one of the most venial of dishonest acts. It is an act which proceeds not from greediness for unlawful gain but from a wish to avoid, by unlawful means it is true, what to a poor man may be a severe loss. It is an act which has no tendency to facilitate or encourage the operations of the coiner. It is an occasional act: an act which does not imply that the person who commits it is a person of lawless habits.

This section is directed against the professional dealers in false coin. Their receipt of the false coin knowing at the time they received it that it was counterfeit, is made the test of their being such dealers. The offence contemplated in this section appears to be a delivery or attempt to deliver by such a dealer to some person whether an accomplice or not,—the intention being that that person, or some other, should be defrauded.

240. Whoever, having any counterfeit coin which is a counterfeit of the Queen's coin, and which, at the time when he became possessed of it, he knew to be a counterfeit of the Queen's coin, fraudulently or with intent that fraud may be committed, delivers the same to any person, or attempts to induce any person to receive it, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Delivery of Queen's coin possessed with the knowledge that it is counterfeit.

See the note to the preceding section. A heavier punishment is here given because the offence relates to Queen's coin.

241. Whoever delivers to any other person as genuine, or attempts to induce any other person to receive as genuine, any counterfeit coin, which he knows to be counterfeit, but which he did not know to be counterfeit at the time when he took it into his possession, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine at an amount which may extend to ten times the value of the coin counterfeited, or with both.

Delivery to another of coin as genuine which when first possessed the deliverer did not know to be counterfeit.

Illustration.

A, a coiner, delivers counterfeit Company's Rupees to his accomplice B, for the purpose of uttering them. B sells the Rupees to C, another utterer, who buys them, knowing them to be counterfeit. C pays away the Rupees for goods to D, who receives them not knowing them to be counterfeit. D, after receiving the Rupees, discovers that they are counterfeit, and pays them away as if they were good. Here D is punishable only under this Clause, but B and C are punishable under Section 239 or 240 as the case may be.

See the note to Section 239.

242. Whoever, fraudulently or with intent that fraud may be committed, is in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Possession of counterfeit coin by a person who knew it to be counterfeit when he became possessed thereof.

243. Whoever fraudulently or with intent that fraud may be committed is in possession of counterfeit coin, which is a counterfeit of the Queen's coin, having known at the time when he became possessed of it that it was counterfeit, shall be punished with imprisonment

Possession of Queen's coin by a person who knew it to be counterfeit when he became possessed thereof.

of either description for a term which may extend to seven years, and shall also be liable to fine.

See the note to Section 239. The offence in this and the preceding section, is the possession of counterfeit coin (with intent to defraud) by a person who from his knowledge at the time when he became possessed of it, may be presumed to be a professional utterer. These sections are not intended to apply to the case of a possession by another person who can shew that, although he received coin knowing it to be counterfeit, the receipt was for no guilty purpose,—as if he shews that it was for the purpose of testing the coin, or of destroying it, or for safe custody until required to be produced in a Court of Justice &c.

244. Whoever, being employed in any mint lawfully established in British India, does any act, or omits what he is legally bound to do, with the intention of causing any coin issued from that mint to be of a different weight or composition from the weight or composition fixed by law, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Person employed in a mint causing coin to be of a different weight or composition from that fixed by law.

The law has fixed the weight and composition of various coins and has declared in what cases they shall be a legal tender. The object of this section is to secure the purity of the coinage and its exact conformity to the legal standard against the act or omission of persons employed in mints.

The proof must be that the person is employed in a Government mint, and that the act or omission which is the subject of the charge was intended to cause the coin there made or issued to vary from the fixed standard. It is not part of the definition, and therefore it will be no necessary part of the proof, that any wrongful gain should accrue to the person charged, or that loss should be caused to the Government or the public.

245. Whoever, without lawful authority, takes out
Unlawfully taking from a mint any coining instrument. of any mint, lawfully estab-
 lished in British India, any
 coining tool or instrument, shall be punished with im-
 prisonment of either description for a term which may
 extend to seven years, and shall also be liable to
 fine.

See the note to Section 233. Suppose the instrument to be
 one used in an ordinary trade: the taking may be for an inno-
 cent use in such trade. The substance of this offence consists
 in taking a coining tool for the purpose of using it to make
 counterfeit coin. If the instrument appears on its face to be
 intended for the purpose of making coin, and it is taken with-
 out lawful authority, the inference is strong that the taker
 means to use it improperly.

246. Whoever fraudulently or dishonestly per-
Fraudulently diminishing the weight or altering the composition of any coin. forms on any coin any operation
 which diminishes the weight or
 alters the composition of that
 coin, shall be punished with imprisonment of either
 description for a term which may extend to three years,
 and shall also be liable to fine.

Explanation. A person who scoops out part of the
 coin, and puts any thing else into the cavity, alters
 the composition of that coin.

247. Whoever fraudulently or dishonestly performs
Fraudulently diminishing the weight or altering the composition of the Queen's coin. on any of the Queen's coin, any
 operation which diminishes the
 weight or alters the composi-
 tion of that coin, shall be
 punished with imprisonment of either description for
 a term which may extend to seven years, and shall
 also be liable to fine.

The coin is made lighter, or its composition altered, "fraudu-
 lently" or "dishonestly." (See Sections 24, 25.) The act of
 debasing, or lightening the weight, if not shewn by direct
 evidence, may be proved by circumstances,—as by shewing that

the accused person had in his possession debased coin or filed coin. The intention to use it for a fraudulent purpose may be inferred from his possession of it, if the coin be found on his person.

A more severe punishment is awarded when the offence concerns Queen's coin.

248. Whoever performs on any coin any operation which alters the appearance of that coin, with the intention that the said coin shall pass as a coin of a different description, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

249. Whoever performs on any of the Queen's coin any operation which alters the appearance of that coin, with the intention that the said coin shall pass as a coin of a different description, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

The operation, whether of gilding, or silvering, or washing, &c., must, it seems, be of such a kind, and so far completed, that the coin which is subjected to it, is actually altered in appearance. The evidence must shew such an alteration, coupled with an intention that the altered coin shall pass as coin of a different description. It will be observed that the words fraudulently and dishonestly are not used. The offence is therefore complete though no fraudulent purpose can be proved. And it does not seem necessary to shew that there is in fact a description of coin at all resembling or corresponding to the altered coin. The act of altering may be proved by evidence that coin so gilded, &c., was found in the prisoner's house or had been

procured there, and that the wash or necessary materials were discovered in his possession.

The distinction between coin of the Queen and other coin is preserved.

250. Whoever, having coin in his possession with respect to which the offence defined in Section 246 or 248 has been committed, and having known at the time when he became possessed of such coin that such offence had been committed with respect to it, fraudulently or with intent that fraud may be committed, delivers such coin to any other person, or attempts to induce any other person to receive the same, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

251. Whoever, having coin in his possession with respect to which the offence defined in Section 247 or 249 has been committed, and having known at the time when he became possessed of such coin that such offence had been committed with respect to it, fraudulently or with intent that fraud may be committed, delivers such coin to any other person, or attempts to induce any other person to receive the same, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

These sections are intended to punish persons who are traders in debased or altered coin.

252. Whoever fraudulently or with intent that fraud may be committed is in possession of coin with respect to which the offence defined in either of the Sections 246 or 248 has been committed, having known at the time of

Delivery to another of coin possessed with the knowledge that it is altered.

Delivery of Queen's coin possessed with the knowledge that it is altered.

Possession of altered coin by a person who knew it to be altered when he became possessed thereof.

becoming possessed thereof, that such offence had been committed with respect to such coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

253. Whoever fraudulently or with intent that fraud may be committed is in possession of coin with respect to which the offence defined in either of the Sections 247 or 249 has been committed, having known at the time of becoming possessed thereof that such offence had been committed with respect to such coin, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Possession of Queen's coin by a person who knew it to be altered when he became possessed thereof.

The mere possession of debased or altered coin by the professional dealer in such coin is hereby made punishable, although no dealing with it by delivering to others &c., can be shewn. The intention that the coin shall be used for the purpose of defrauding others is part of the definition.

254. Whoever delivers to any other person as genuine, or as a coin of a different description from what it is, or attempts to induce any person to receive as genuine, or as a different coin from what it is, any coin in respect of which he knows that any such operation as that mentioned in Sections 246, 247, 248 or 249 has been performed, but in respect of which he did not, at the time when he took it into his possession, know that such operation had been performed, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine to an amount which may extend to ten times the value of the coin for which the altered coin is passed or attempted to be passed.

Delivery to another of coin as genuine which, when first possessed, the deliverer did not know to be altered.

OFFENCES RELATING TO GOVERNMENT STAMPS. 197

See the notes to the preceding sections. The person punished is he who, not being a dealer in debased or altered coin, but having such coin in his possession, passes it off, or attempts to pass it off to others.

By Act XVII. of 1835, the rupee is made a legal tender provided it has not been diminished below a certain weight, and provided it has not been clipped or filed or defaced otherwise than by use. It will be observed that the Code does not make the circulation by innocent holders of coin which has been debased or reduced below its proper weight an offence, when those holders are unaware that it has been so debased or reduced. It is an offence to pass such coin only when the person passing it knows that it has been diminished or altered by one of the operations which previous sections have made punishable.

The remaining sections of the Chapter provide for the punishment of offences relating to certain Government stamps. The stamps protected by these provisions seem to have little in common with coin, except that both may be said to be stamped and issued by the authority of Government. These stamps are in truth nothing more than impressions upon paper, parchment, or any material used for writing, made by Government or its officers, for the purpose of revenue, or in payment for service rendered.

To avoid ambiguity from the use of this word "stamp" it should be observed that it is used throughout the following sections to designate, not the instrument by which a particular impression is made, nor the paper or other material upon which it is made, but the impression itself,—the mark set upon the paper or other material.*

The Government stamps to which those sections relate, being stamps from which the Government derives a revenue, or which are issued for revenue purposes, are quite distinct from stamps

* In the late Stamp Act the word "Stamp" except when the contrary shall appear from the context is used to signify a stamped piece of paper or other stamped material for writing on. See Section 141.

used by Government for other purposes, as stamps affixed to or impressed on property, denoting that it belongs to the Government. These last are merely property marks, not sources of revenue, and are dealt with in a subsequent Chapter, XVIII.

The sections relating to counterfeit stamps will be found to resemble certain sections relating to counterfeit coin, and the notes to the latter will sufficiently explain the following provisions concerning counterfeit stamps.

255. Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, any stamp issued by Government for the purpose of revenue, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation. A person commits this offence who counterfeits by causing a genuine stamp of one denomination to appear like a genuine stamp of a different denomination.

“Counterfeit” has been explained in Section 28, and is further explained here.

“Perform any part of the process of, &c.” The impression and not the die is meant. It seems that some part of this impression must be, if not completed, yet sufficiently complete to shew the intention.

256. Whoever has in his possession any instrument or material, for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Here the punishment is directed to the offence of attempting or preparing to counterfeit. The possession of any instrument

by which the counterfeit stamp impression is made, with a criminal intention, or even the possession of any material with the like intent is punished.

“Instrument” may denote a die or similar instrument, the mere possession of which, if not satisfactorily accounted for, may prove an intention to use it for the purpose of counterfeiting. “Material for, &c.,” may include the paper on which, or some one of the ingredients (in a more or less forward state of preparation) whereby the impression is made. The possession of such materials can of course be punishable under this clause only where the criminal purpose is established to the satisfaction of the Court.

257. Whoever makes, or performs any part of the process of making, or buys, or sells, or disposes of, any instrument, for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

258. Whoever sells, or offers for sale, any stamp which he knows or has reason to believe to be a counterfeit of any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

259. Whoever has in his possession any stamp which he knows to be a counterfeit of any stamp issued by Government for the purpose of revenue, intending to use or dispose of the same as a genuine stamp, or in order that it may be used as a genuine stamp, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

260. Whoever uses as genuine any stamp, knowing it to be a counterfeit of any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Using as genuine a Government stamp known to be counterfeit.

261. Whoever, fraudulently or with intent to cause loss to Government, removes or effaces from any substance bearing any stamp issued by Government for the purpose of revenue, any writing or document for which such stamp has been used, or removes from any writing or document a stamp which has been used for such writing or document, in order that such stamp may be used for a different writing or document, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Effacing any writing from a substance bearing a Government Stamp, or removing from a document a stamp used for it, with intent to cause loss to Government.

262. Whoever, fraudulently or with intent to cause loss to Government, uses for any purpose a stamp issued by Government for the purpose of revenue which he knows to have been before used, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Using a Government Stamp known to have been before used.

263. Whoever, fraudulently or with intent to cause loss to Government, erases or removes from a stamp issued by Government for the purpose of revenue any mark put or impressed upon such stamp for the purpose of denoting that the same has been used, or knowingly has in his possession, or sells or disposes of any such stamp from which such mark has been erased or removed, or sells, or disposes of any such stamp which he knows to have been used, shall be punished

Erasure of mark denoting that stamp has been used.



with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

CHAPTER XIII.

OF OFFENCES RELATING TO WEIGHTS AND MEASURES.

The offences punishable by this Chapter are not defined with reference to any precise standard of weight or measure established by law. A *false* weight or measure here signifies that,—taking the law or the ordinary usage of the place, or the common understanding of the parties, to have fixed on a certain known instrument of weight or measure, with reference to which two persons deal together,—the false dealer by deceit substitutes another weight or measure, in order to defraud.

The intention to defraud, or that the false weight or measure shall be used by other persons in order to defraud, is an essential part of the offence. The balance or scales, weights, &c., used may be and are probably often of the rudest construction. Where their defects are visible to a purchaser, and there is no attempt to conceal them, there can be no reason for imputing an intention to defraud. On the other hand, the use of a false balance artfully contrived to elude detection, carries with it a strong presumption that it is used in order to defraud.

264. Whoever fraudulently uses any instrument for weighing which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Fraudulent use of false instrument for weighing.

265. Whoever fraudulently uses any false weight or false measure of length or capacity, or fraudulently uses any weight or any measure of length or capacity as a different weight or measure from what it is, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

266. Whoever is in possession of any instrument for weighing, or of any weight, or of any measure of length or capacity, which he knows to be false, and intending that the same may be fraudulently used, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

As in the case of false coin, a weighty circumstance of suspicion is by this Section made part of the definition of an offence.

It is the intention that the false instrument shall be used to defraud, that is material. The proof of such intention must, as in other cases, be made out to the satisfaction of the Court. The mere possession of the false instrument, if such possession cannot be satisfactorily explained and accounted for, is sufficient ground for presuming an intention to use it fraudulently.

267. Whoever makes, sells, or disposes of any instrument for weighing, or any weight, or any measure of length or capacity which he knows to be false, in order that the same may be used as true, or knowing that the same is likely to be used as true, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

CHAPTER XIV.

OF OFFENCES AFFECTING THE PUBLIC
HEALTH, SAFETY, CONVENIENCE,
DECENCY AND MORALS.

268. A person is guilty of a public nuisance, who
 does any act or is guilty of an
Public nuisance. illegal omission which causes
 any common injury, danger, or annoyance to the
 public, or to the people in general who dwell or
 occupy property in the vicinity, or which must
 necessarily cause injury, obstruction, danger, or
 annoyance to persons who may have occasion to use
 any public right.

A common nuisance is not excused on the ground
 that it causes some convenience or advantage.

See the explanations of "person," "public," "injury," and
 "illegal,"—Sections 11, 12, 43, 44. This definition of a public
 or common nuisance is material with reference to Sec. 290 of this
 chapter, which Section provides a punishment for the offence of
 committing a public nuisance in any case not otherwise punish-
 able by the Code.

To constitute a nuisance there must be some act or illegal
 omission, injurious, dangerous, or annoying, not merely to an
 individual or a small number of persons, but to the public at
 large or to some class of the public,—such as the neighbouring
 community, or those who dwell or occupy property near the
 place.

There are many things, which may be nuisances and are
 offences when done in populous places, although they are either
 innocent or not deemed deserving of punishment when done in
 a retired locality. Suppose a house in the country is used for
 the purpose of carrying on a dangerous trade or one which

renders the air unwholesome or disagreeable to the senses,—or suppose a private way leading to a house is obstructed or made dangerous,—the injury or annoyance, if it affects only the residents of two or three other houses, will not necessarily make this a public nuisance.

It is not easy to say how many persons must suffer, or be in danger of suffering, to make a nuisance public or common. But it seems the thing done, though the general public need not be actually injured by it, must be of a nature to produce injury annoyance, &c., to all, and must do so in fact to all who are in the particular locality or otherwise within the influence of the act. One who indecently exposes his person to a single individual, though it be in a public place, yet not within public view, is not punishable for a *nuisance*. But if the exposure were to several, or if many could have seen it, being public, if they had looked, the offence here defined would be committed.

The nuisance may be caused by doing a thing which is injurious or annoying, or by neglecting to do that which the public health or safety requires to be done. For example, by keeping a house, &c., in a filthy state, neglecting ordinary precautions during repairs, &c. In the latter case the omission must be “illegal.” See the explanation of this word, Section 43.

The following are instances of public nuisances. Obstructions of high ways, navigable rivers, and the like ; injuries to such ways and places ; neglect or refusal by those whose duty it is so to do, to keep them in repair ; the carrying on, in populous localities or near a highway, of trades or occupations injurious to health or comfort ; making great noises to the disturbance of the neighbourhood ; keeping large quantities of gunpowder in populous places to the danger of the public safety ;—and other acts of a similar tendency.

The latter clause of the definition seems to comprehend such nuisances as obstructions to public roads, navigable rivers, &c. In such nuisances, it does not seem to be essential to shew actual injury or annoyance &c., to persons who use the road.

It is sufficient if the obstruction is calculated to injure all who may choose and have a right to use the way. And the person causing the obstruction or other nuisance, cannot excuse it by shewing that, in other respects, and on the whole, his act has worked some advantage or improvement,—as that he has opened a better way, or has improved the navigation of a river, &c. But in considering whether an act or omission which causes injury &c., in a slight degree, or in some extreme cases only, and as an uncertain and rare consequence, amounts to a public nuisance, the General Exception contained in Section 95, must be remembered.

The general punishment provided for committing a public nuisance is not applicable to acts which are otherwise expressly made punishable. This Chapter contains special provisions for the punishment of many such acts as those above mentioned : and to those thus specifically dealt with, the 290th Section is inapplicable.

See also Act XXI. of 1841 (*For the better prevention of Local Nuisances*).

269. Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Negligent act likely to spread infection of any disease dangerous to life.

If a man is attacked by a contagious and deadly disease and needlessly goes abroad with it in the public way, or if a person carries out a child so infected, he does what he may be supposed to know to be likely to spread the infection. And unless some lawful occasion or reason for this conduct can be shewn, as that the sick person had been directed to be removed to a Hospital, and that the removal was performed with due caution, the act will be an offence punishable under this Section.

270. Whoever malignantly does any act which is, and which he knows or has reason to believe to be likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

The offence here is an aggravation of that which is punished by the preceding Section. The malignant intention to spread the infection is part of the definition. Suppose a person having small pox is exposed in a public street, either to excite charity, or because, through fear, he has been removed from a house where he was lodged,—the offence committed by those who exposed him would not probably come within this Section.

271. Whoever knowingly disobeys any rule made and promulgated by the Government of India, or by any Government, for putting any vessel into a state of quarantine, or for regulating the intercourse of vessels in a state of quarantine with the shore, or with other vessels, or for regulating the intercourse between places where an infectious disease prevails and other places, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

272. Whoever adulterates any article of food or drink, so as to make such article noxious as food or drink, intending to sell such article as food or drink, or knowing it to be likely that the same will be sold as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

The mixing noxious ingredients in food or drink, or otherwise rendering it unwholesome by adulteration, whether it be intended for the use of man or of any animal, is hereby punished.

273. Whoever sells, or offers or exposes for sale, as food or drink, any article which has been rendered or has become noxious, or is in a state unfit for food or drink, knowing or having reason to believe that the same is noxious as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

Whether it has been adulterated so as to become noxious, or has become unfit for food or drink by decay &c., or has never been fit for food,—a sale or attempt to sell any such article by one who knows its noxiousness, is an offence if he offers it for sale as food or drink. The purpose for which the sale is made is all-important. Suppose meat to be sold as food for dogs and not for men, it may be that it would not be unfit for the purpose intended, although not sufficiently good for the food of man.

274. Whoever adulterates any drug or medical preparation in such a manner as to lessen the efficacy, or change the operation of such drug or medical preparation, or to make it noxious, intending that it shall be sold or used for, or knowing it to be likely that it will be sold or used for, any medicinal purpose, as if it had not undergone such adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

275. Whoever, knowing any drug or medical preparation to have been adulterated in such a manner as to lessen its efficacy, to change its operation, or to render it noxious, sells the same, or offers or exposes it for sale, or issues it from any dispensary for medicinal purposes as unadulterated, or causes it to be used for medicinal purposes by any person not knowing of

the adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

276. Whoever knowingly sells, or offers or exposes for sale, or issues from a dispensary for medicinal purposes any drug or medical preparation, as a different drug or medical preparation, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

277. Whoever voluntarily corrupts or fouls the water of any public spring or reservoir, so as to render it less fit for the purpose for which it is ordinarily used, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred Rupees, or with both.

The water must be for public use. See note to Section 268. Springs and reservoirs are alone mentioned. The provision therefore does not extend to the waters of rivers, &c., although they may ordinarily be used for drinking and other domestic purposes.

“Voluntarily corrupts, &c.” In such acts as suffering the washings or refuse of an offensive trade to flow into a tank of drinking water, or washing skins &c., there cannot but be a voluntary fouling. See Section 39.

The purpose for which the water is ordinarily used must be considered in determining whether there has been a voluntary corrupting within the meaning of this Section.

278. Whoever voluntarily vitiates the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood or passing along a public way,

shall be punished with fine which may extend to five hundred Rupees.

See the notes to Section 268, and to the last preceding Section.

In several of the subsequent Sections of this Chapter, particular acts done so rashly or negligently as to endanger human life or the personal safety of others, or as to be likely to cause hurt, are made punishable. In a later Chapter there is a general provision to the like effect (see Section 336). The offences thus made punishable are complete although no personal hurt may be sustained. Where the rashness or negligence causes bodily pain ("hurt" or "grievous hurt"), it is punishable under Sections 337, 338. Where it causes death, the offender may be guilty of culpable homicide which will amount to murder if the act is of that imminently dangerous and reckless kind which is contemplated by Section 300. As to this, see the 4th Clause of that Section.

279. Whoever drives any vehicle or rides on any Rash driving or riding on a public way. public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

This offence against the public safety is completed although the rash or negligent act results in no injury to life or property. The cases contemplated in this and the following sections seem to be those in which there is indifference or rashness in performing a lawful act, and therefore criminality, but not in the same degree as where there is a determination to do wrong. If a man is so rash as to take on himself an office or duty requiring skill, which he cannot adequately discharge, his conduct has in it a taint of criminality, and it will be no defence to shew that he acted to the best of his ability.

280. Whoever navigates any vessel in a manner
Rash navigation of a vessel. so rash or negligent as to en-
 danger human life, or to
 cause hurt or injury to any other person, shall be
 punished with imprisonment of either description for
 a term which may extend to six months, or with fine
 which may extend to one thousand Rupees, or with
 both.

See the note to the last preceding section. Act I. of 1859,
For the amendment of the law relating to Merchant Seamen,
 provides for the punishment of offences of this nature commit-
 ted by the Masters and Sailors of British sea-going vessels.

281. Whoever exhibits any false light, mark, or
Exhibition of a false light,
mark, or buoy. buoy, intending or knowing it
 to be likely that such exhibi-
 tion will mislead any navigator, shall be punished
 with imprisonment of either description for a term
 which may extend to seven years, or with fine, or
 with both.

282. Whoever knowingly or negligently conveys,
Conveying person by water
for hire in a vessel overload-
ed or unsafe. or causes to be conveyed for
 hire, any person by water in
 any vessel, when that vessel is
 in such a state or so loaded as to endanger the life
 of that person, shall be punished with imprisonment
 of either description for a term which may extend to
 six months, or with fine which may extend to one thou-
 sand Rupees, or with both.

Boatmen plying for hire on rivers, at ferries, &c., whose
 boats are overloaded, or are not in a fit condition safely to carry
 passengers, are criminally responsible for their neglect. It
 should be proved that there was some risk to life caused, and
 the circumstances from which knowledge or negligence is to
 be inferred should be shewn.

283. Whoever, by doing any act, or by omitting
Danger or obstruction in a public way or navigation. to take order with any property in his possession or under his charge, causes danger, obstruction, or injury to any person in any public way or public line of navigation, shall be punished with fine which may extend to two hundred Rupees.

Generally a man is bound so to use his property as not to injure others. The offence here punished is the public nuisance of causing obstruction &c., in a public way or navigable river or canal. There must be some negligent act or improper omission. Suppose a boat sinks in the navigable channel of a river and causes obstruction or danger;—if the boat was lost by the mere negligence of those who had charge of it, they will be punishable under this section. It seems from the terms of the section that there must be evidence that some person has actually suffered injury or been obstructed &c.

284. Whoever does, with any poisonous substance,
Negligent conduct with respect to any poisonous substance. any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any person, or knowingly or negligently omits to take such order with any poisonous substance in his possession as is sufficient to guard against probable danger to human life from such poisonous substance, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

Suppose a deadly poison is left exposed in a place usually frequented by children. This, like other sections of this Chapter, proceeds on the principle that carelessness, when sufficient in degree, is to be regarded as criminal notwithstanding that it may not have occasioned hurt. In this and the following section, the offences defined are not necessarily of the nature of public nuisances. For the offence may be committed in places

where persons do not congregate together. It is sufficient that the life of a single person may be put in danger.

285. Whoever does, with fire or any combustible matter, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person, or knowingly or negligently omits to take such order with any fire or any combustible matter in his possession as is sufficient to guard against any probable danger to human life from such fire or combustible matter, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

See the note to the preceding Section. It will be observed that the punishment in these and the subsequent Sections is directed against an act which may be dangerous or cause hurt to human life. If the expression "injury to any other person" is to be understood to mean not only a personal injury but any injury (see Section 44) a risk of danger to property will be sufficient to make a man criminally responsible for his negligence.

286. Whoever does, with any explosive substance, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person, or knowingly or negligently omits to take such order with any explosive substance in his possession as is sufficient to guard against any probable danger to human life from that substance, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

Keeping a large quantity of gunpowder or fire works, &c., in a populous place, even though they be not negligently kept, may perhaps constitute an offence within this Section. Any explosive substance kept in the possession of a person who

knows its qualities, in whatever place it may be kept, should be guarded with a care proportionate to the risk of danger to human life which it may occasion. Under the first part of the Section, throwing fireworks in a frequented place where there are people on foot or horseback &c., may be punishable. The Police Act for the Presidency Towns (Act XIII. of 1856), has a provision on this subject which (with all the provisions of that "local law") will remain unaffected by this Code.

287. Whoever does, with any machinery, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person, or knowingly or negligently omits to take such order with any machinery in his possession or under his care as is sufficient to guard against any probable danger to human life from such machinery, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

The words "or under his care," which do not occur in the preceding Sections, are probably inserted here to include Engineers &c., who may be in charge of the machinery. The law requires that there shall be a competent knowledge of their duty in such persons, and the words "knowingly or negligently" must be interpreted accordingly.

288. Whoever, in pulling down or repairing any building, knowingly or negligently omits to take such order with that building as is sufficient to guard against any probable danger to human life from the fall of that building, or of any part thereof, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

Negligent conduct with respect to any machinery in the possession or under the charge of the offender.

Negligence with respect to pulling down or repairing buildings.

“Such order as is sufficient,” &c. The degree of caution is in proportion to the apparent necessity for it. If the building is in a retired place where there is no probability of persons passing by, measures of precaution may be sufficient which if the building is in a populous town and the repairs &c., are done at a time of day when the streets are usually thronged, would be wholly inadequate. The words “the fall of that building,” &c., seem to exclude the not improbable case of danger to life arising from the risk of the fall of scaffolding, and other materials, provided for repairing it.

289. Whoever knowingly or negligently omits to
Negligence with respect to take such order with any
any animal. animal in his possession as is
 sufficient to guard against any probable danger to
 human life, or any probable danger of grievous hurt
 from such animal, shall be punished with imprison-
 ment of either description for a term which may
 extend to six months, or with fine which may extend
 to one thousand Rupees, or with both.

“Knowingly or negligently, &c.” Where the animal is not of such a description as in general from its ferocity to endanger the persons of those whom it meets, the owner or person in possession of it will not be criminally liable, unless he knows of the ferocity of the particular animal, and neglects to take proper measures to prevent risk of hurt from it. Fierce and dangerous animals, such as bears, or dogs which are known to bite people, must be kept with a care proportioned to the risk of keeping them. “Danger of grievous hurt” is here mentioned. See Section 320. If there is a risk which falls short of danger to life or of grievous hurt, such as the risk of being slightly bitten, it will not be sufficient.

290. Whoever commits a public nuisance in any
Punishment for public nuisance. case not otherwise punishable
 by this Code, shall be punished
 with fine which may extend to two hundred Rupees.

See Section 268 and the note thereto. Many Sections of this and other Chapters provide a punishment for various specific public nuisances. This section punishes any public nuisance coming within the definition given by Section 268, and not otherwise expressly punishable under the Code.

If there are nuisances which do not fall within *any* provision of this Code, they will at present remain punishable under any law now in force which may be found to provide a penalty.

A man may be guilty of a nuisance by the act of his agent or servant. He may be personally ignorant of the particular act or omission which causes the injury, annoyance &c., and may have no intention to cause it. But if those whom he authorises to manage his property, acting within their general authority, occasion a public nuisance on such property, he must answer criminally for it.

According to the definition of a public nuisance "a person is guilty of a public nuisance who does, &c." This word "person" is explained to include a company or body of persons whether incorporated or not (Section 11). It would therefore seem that a company of persons,—as a Railway Company, or a Gas Company, may be punished under this Code for the acts or illegal omissions of their authorized agents,—if a public nuisance is caused by such acts or omissions, and there is no special law which is applicable.

It seems that no length of time will make a public nuisance lawful, or exempt those who create or continue it from criminal liability. A person who continues a nuisance created by another would probably be held to come within the word "whoever commits, &c." If the owner of land erects a building which is a public nuisance and lets the land, he might probably be held criminally liable for its continuance during the lease.

291. Whoever repeats or continues a public nuisance, having been enjoined by any public servant who has lawful authority to issue such injunction not to repeat

Continuance of nuisance after injunction to discontinue.

or continue such nuisance, shall be punished with simple imprisonment for a term which may extend to six months, or with fine, or with both.

Probably the injunction which a magistrate is authorized to give under the Act (XXI. of 1841) for the better prevention of local nuisances, was in the contemplation of the legislature. The punishment which may be awarded under this Section must, it seems, be in substitution of so much of the penalty provided by the second Section of that Act as authorises fine and imprisonment.

The three Sections which follow, relate to the offence of selling &c., indecent books, prints &c. and singing obscene songs. The offences contemplated, as well the selling or importing &c. for sale, as the wilfully exhibiting to public view &c., are offences against public decency. And the proof should support this, by shewing that the person charged had in contemplation such a public offence. See note to Section 268.

292. Whoever sells or distributes, or imports or prints for sale or hire, or wilfully exhibits to public view, any obscene book, pamphlet, paper, drawing, painting, representation, or figure, or attempts or offers so to do, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

Exception. This Section does not extend to any representation sculptured, engraved, painted, or otherwise represented, on or in any Temple, or on any car used for the conveyance of idols, or kept or used for any religious purpose.

293. Whoever has in his possession any such obscene book or other thing as is mentioned in the last preceding Section for the purpose of sale, distribution, or public exhibition, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

Having in possession obscene book for sale or exhibition.

294. Whoever sings, recites, or utters in or near
 any public place any obscene
 song, ballad, or words to the
 annoyance of others, shall be punished with imprison-
 ment of either description for a term which may ex-
 tend to three months, or with fine, or with both.

CHAPTER XV.

OF OFFENCES RELATING TO RELIGION.

The principle on which this Chapter has been framed is this, —that every man should be allowed to profess his own religion, and that no man should be suffered to insult the religion of another.

The question whether insults offered to religion ought to be visited with punishment, does not appear at all to depend on the question whether that religion be true, or false. The religion may be false, but the pain which such insults give to the professors of that religion is real. It is often, as the most superficial observation may convince us, as real a pain, and as acute a pain, as is caused by almost any offence against the person, against property, or against character. Nor is there any compensating good whatsoever to be set off against this pain. Discussion, indeed, tends to elicit truth. But insults have no such tendency. They can be employed just as easily against the purest faith as against the most monstrous superstition. It is easier to argue against falsehood than against truth. But it is as easy to pull down or defile the temples of truth as those of falsehood. It is as easy to molest with ribaldry and clamour, men assembled for purposes of pious and rational worship, as men engaged in the most absurd ceremonies. Such insults, when directed against erroneous opinions,

seldom have any other effect than to fix those opinions deeper, and to give a character of peculiar ferocity to theological dissension. Instead of eliciting truth they only inflame fanaticism.

295. Whoever destroys, damages, or defiles any place of worship, or any object held sacred by any class of persons with the intention of thereby insulting the religion of any class of persons, or with the knowledge that any class of persons is likely to consider such destruction, damage, or defilement as an insult to their religion, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Injuring or defiling a place of worship with intent to insult the religion of any class.

Some act of intentional destruction or damage must be proved. If the charge is, the intentional defiling of a place or object held sacred by any class of persons, some act which is considered by persons of that class to defile, should be proved :—as the slaughter of a cow in a place deemed sacred, or the pollution by any means of a mosque.

The intention to insult religion is always an essential part of this offence. In such cases as those just referred to, there will usually be little doubt respecting the intention. But if the offence charged is injury or damage done to a sacred place or object, the Court should be satisfied that the act is one, not merely of thoughtlessness or mischief (see Section 425), but of intentional insult to religion. For it is only for such acts that the severe punishment provided by this Section is intended.

The words “any class of persons” may include any religious sect, however few in number. See Section 117.

296. Whoever voluntarily causes disturbance to any assembly lawfully engaged in the performance of religious worship or religious ceremonies, shall be punished with

Disturbing a religious assembly.

imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Assemblies held for religious worship, or for the performance of religious ceremonies, are protected from intentional disturbance by this provision.

A person *voluntarily* causes disturbance when he causes it by means intended by him to cause it, or by means which he knows to be likely to cause it (see Section 39).

Many of the great Hindoo festivals at Juggurnauth, Allahabad, Hurdwar, and other places, where thousands of Hindoos are gathered together for the performance of religious ceremonies, are likewise attended by other persons whose object it is to engage the worshippers in friendly discussion on religious subjects. Persons thus engaged in discussion together, or persons who listen of their own accord to the argument, commit no offence within this or within any other penal provision of the Code. If their orderly proceedings are interrupted by other persons who seek to produce angry discussion, to create a disturbance, and to break up the congregation,—a disturbance thus created, though it may be said to be indirectly occasioned by the original discussion, cannot properly be deemed to be *voluntarily* caused by the promoters of such discussion.

The assembly must be lawfully engaged in the performance of religious worship. The place of assembly may be unfit or improper for the purpose, though the object of the assembly may be lawful. A religious assemblage held in a public street or thoroughfare, so as to cause obstruction, would probably not be protected by the provisions of this Section from disturbance voluntarily caused by passengers, or by public servants in the exercise of their duties.

297. Whoever, with the intention of wounding the feelings of any person, or of insulting the religion of any person, or with the knowledge that the feelings of any person are likely to be wounded, or that the religion

Trespassing on burial-places,
&c.

of any person is likely to be insulted thereby, commits any trespass in any place of worship or on any place of sepulture or any place set apart for the performance of funeral rites or as a depository for the remains of the dead, or offers any indignity to any human corpse, or causes disturbance to any persons assembled for the performance of funeral ceremonies, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both. .

Trespasses in places of worship, and insults to the rites of sepulture and the remains of the dead, are hereby made punishable.

“Criminal Trespass” is an offence defined and made punishable (see Sections 441 and 447) : but an ordinary act of trespass on property is not treated as an offence.

The mere act of trespassing in a place of worship or a burial place, &c., is punished, when the trespasser has the intention described in the first part of this Section. The intention to wound the feelings or religion, not of a class of persons but of a single individual, suffices to make the act of trespass an offence. The Court should be satisfied that the trespass was committed, or the indignity offered, knowingly, and with this intention.

An act which is done with the knowledge that a person is likely to consider that act as an insult to his religion, is an act by which “religion is likely to be insulted” within the meaning of this Section.

298. Whoever, with the deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in the hearing of that person, or makes any gesture in the sight of that person, or places any object in the sight of that person, shall be punished with imprisonment

Uttering words, &c., with deliberate intent to wound the religious feelings of any person.

of either description for a term which may extend to one year, or with fine, or with both.

The Law Commissioners thus describe the object of this provision :—" In framing this Clause we had two objects in view. We wish to allow all fair latitude to religious discussion, and at the same time to prevent the professors of any religion from offering, under the pretext of such discussion, intentional insults to what is held sacred by others. We do not conceive that any person can be justified in wounding with deliberate intention the religious feelings of his neighbours by words, gestures, or exhibitions. A warm expression dropped in the heat of controversy, or an argument urged by a person, not for the purpose of insulting and annoying the professors of a different creed, but in good faith for the purpose of vindicating his own, will not fall under the definition contained in this Clause."

The speech or gesture, &c., which is punishable as an offence by this Section, must be advisedly and deliberately intended to wound the religious feelings of some person.

CHAPTER XVI.

OF OFFENCES AFFECTING THE HUMAN BODY.

It is to be borne in mind that the definitions, penal provisions, and illustrations of this Chapter (as of all the other Chapters) of the Code, must be understood subject to the General Exceptions contained in the 4th Chapter. Many things which cause death or hurt, or otherwise affect injuriously the human body, are by virtue of those Exceptions, exempt from punishment, and therefore are not *offences* within the Code.

Of Offences affecting Life.

The first portion of the Chapter of Offences against the body, consists of those offences which affect human life. As this is the most important division of the Chapter, the attention of the reader must be especially given to those General Exceptions which shew when the causing of the death of a human being is not an offence. Homicides, which in their circumstances can be brought within any one of the General Exceptions, cannot, it is needless to state, be deemed culpable homicides within the definition given in Section 1 of the present Chapter.

Those homicides which are not culpable, and therefore not offences, may be generally described as being (1) Accidental, or (2) Justifiable.

1. *Accidental homicide* is, where death is caused by accident or misfortune without any criminal intention or knowledge by one who does a lawful act in a lawful manner and with proper care and caution. See Section 80 *ante*, and the note thereto.

There may sometimes be great difficulty in giving any legal certainty to such vague terms as "accident," "proper care and caution," and others which occur in this General Exception. But it is nevertheless the duty of the Court to ascertain in each case after a careful consideration of the facts, what is their true meaning as applied to those facts.

Suppose A and Z engage in some game or sport together, in the course of which A unintentionally causes Z's death. If the sport is not dangerous, and is likely to cause no harm or only very slight harm (see Section 95), A has committed no offence. But, if the sport is a very dangerous one, carried on roughly and carelessly,—or if ill-will to the deceased person is proved, or unfair play, or some undue advantage taken in the course even of a harmless pastime,—the Court will probably conclude that A, having caused Z's death in a cruel or unusual manner, has committed either the offence of culpable homicide or some other offence. See Section 87.

Again suppose a parent whips his child and death follows the whipping. The Court, having ascertained satisfactorily that

the punishment was not of a cruel or unusual kind, but was only such moderate chastisement as the law allows to a parent for his child's benefit, would doubtless decide that the death of the child was caused by accident or misfortune, and that the father had committed no offence. See Section 89.

In these and similar instances it is the duty of the Court first to ascertain, and then to apply, the rule of law which is applicable. It must determine the extent of the power of a parent over his child,—the lawfulness of a particular act or game, or of the manner in which it is performed or played,—what degree of caution the law requires in the particular case under consideration, &c. If A causes B's death unintentionally by shooting him with a gun which A did not know to be loaded, and the question arises whether this homicide is accidental or culpable,—A if he proved that he had reasonable grounds to suppose that the gun was not loaded (as if he had himself discharged it an hour before and put it in a place of safe custody where he again found it), would probably be deemed to have acted with proper care and caution. The utmost caution that can be used is not requisite,—but only that reasonable caution which is usual and ordinary in like cases.

2. *Justifiable homicide* is where the taking away of life is justified because it is taken by a judicial act, or in pursuance of a judicial sentence pronounced by some Court or Judge,—or because it is taken in the exercise of a power given, or supposed in good faith to be given, by law.

The execution of a person who has been duly convicted of murder and sentenced to be punished with death, is an obvious instance of death warranted by the sentence of a Court of Justice and therefore justified.

The execution of a criminal in pursuance of the judgment of a Court, even though the Court had not jurisdiction to pass the judgment, if the executioner in good faith believed that the Court had such jurisdiction, is also an instance of justifiable homicide. And not only is the executioner justified in such a case, but the Court or Judge passing judgment in the exercise of

cause death, commits the offence of culpable homicide.*

* In the Code as originally framed the definition runs thus: "Whoever does any act or omits what he is legally bound to do with the intention &c." The same words, or other words tantamount in effect, frequently recur in subsequent Sections of the Chapter of Offences affecting the human body, and elsewhere throughout the Penal Code.

In the Code as now enacted, it frequently happens that no words are used to denote acts of illegal omission; but by a General Explanation it is explained that "in every part of this Code, except where a contrary intention appears from the context, words which refer to acts done extend also to illegal omission:" (Sec. 32).

The Law Commissioners in a note appended to the corresponding Chapter of the original Code say, "We think this the most convenient place for explaining the reason which has led us so often to employ them (that is the words "omits what he is legally bound &c.") For if that reason shall appear to be sufficient in cases in which human life is concerned, it will *à fortiori* be sufficient in other cases.

"Early in the progress of the Code it became necessary for us to consider the following question: when acts are made punishable on the ground that those acts produce, or are intended to produce, or are known to be liable to produce certain evil effects, to what extent ought omissions which produce, which are intended to produce, or which are known to be likely to produce the same evil effects to be made punishable?"

"Two things we take to be evident; first, that some of these omissions ought to be punished in exactly the same manner in which acts are punished; secondly, that all these omissions ought not to be punished. It will hardly be disputed that a gaoler who voluntarily causes the death of a prisoner by omitting to supply that prisoner with food, or a nurse who voluntarily causes the death of an infant entrusted to her care by omitting to take it out of a tub of water into which it has fallen, ought to be treated as guilty of murder. On the other hand, it will hardly be maintained that a man should be punished as a murderer because he omitted to relieve a beggar, even though there might be the clearest proof that the death of the beggar was the effect of this omission, and that the man who omitted to give the alms knew that the death of the beggar was likely to be the effect of the omission. It will hardly be maintained that a surgeon ought to be treated as a murderer for refusing to go from Calcutta to Meerut to perform an operation, although it should be absolutely certain that this surgeon was the only person in India who could perform it, and that if it were not performed the person who required it, would die. It is difficult to say whether a Penal Code which should put no omissions on the same footing with acts, or a Penal Code which should put all omissions on the same footing with acts, would produce consequences more absurd and revolting. There is no country in which either of these principles is adopted. Indeed, it is hard to conceive how, if either were adopted, society could be held together.

"It is plain, therefore, that a middle course must be taken. But it is not easy to determine what that middle course ought to be. The absurdity of the two extremes is obvious. But there are innumerable intermediate points; and wherever the line of demarcation may be drawn it will, we fear, include some cases which we might wish to exempt, and will exempt some which we might wish to include."

The Commissioners then propose the rule which the Code adopts for the punishment of acts of omission (see Section 32) and proceed thus—"We cannot defend this rule better than by giving a few illustrations of the way in which it will operate. A omits to give Z food, and by that omission voluntarily causes Z's death. Is this murder? Under our rule it is murder if A was Z's gaoler, directed by the law to furnish Z with food. It is murder if Z was the infant child of A, and had therefore a legal right to sustenance, which right a civil Court would

Illustrations.

(a) A lays sticks and turf over a pit, with the intention of thereby causing death, or with the knowledge that death is likely to be

enforce against A. It is murder if Z was a bed-ridden invalid, and A a nurse hired to feed Z.

"It is not murder if Z is a beggar who has no other claim on A than that of humanity.

"A omits to tell Z that a river is swollen so high that Z cannot safely attempt to ford it, and by this omission voluntarily causes Z's death. This is murder, if A is a peon stationed by authority to warn travellers from attempting to ford the river. It is murder if A is a guide who had contracted to conduct Z. It is not murder if A is a person on whom Z has no other claim than that of humanity. A savage dog fastens on Z. A omits to call off the dog, knowing that if the dog be not called off it is likely that Z will be killed. Z is killed. This is murder in A, if the dog belonged to A, inasmuch as his omission to take proper order with the dog is illegal. But if A be a mere passer-by it is not murder.

"We are sensible that in some of the cases which we have put our rule may appear too lenient. But we do not think that it can be made more severe, without disturbing the whole order of society. It is true that the man who, having abundance of wealth, suffers a fellow creature to die of hunger at his feet, is a bad man, a worse man, probably, than many of those for whom we have provided very severe punishment. But we are unable to see where, if we make such a man legally punishable, we can draw the line. If the rich man who refuses to save a beggar's life at the cost of a little copper is a murderer, is the poor man just one degree above beggary also to be a murderer if he omits to invite the beggar to partake of his hard-earned rice? Again: if the rich man is a murderer for refusing to save the beggar's life at the cost of a little copper, is he also to be a murderer if he refuses to save the beggar's life at the cost of a thousand rupees? Suppose A to be fully convinced that nothing can save Z's life, unless Z leave Bengal, and reside a year at the Cape, is A, however wealthy he may be, to be punished as a murderer because he will not, at his own expence send Z to the Cape? Surely not. Yet it will be difficult to say on what principle we can punish A for not spending an anna to save Z's life, and leave him unpunished for not spending a thousand rupees to save Z's life. The distinction between a legal and an illegal omission is perfectly plain and intelligible. But the distinction between a large and a small sum of money is very far from being so; not to say that a sum which is small to one man is large to another.

"The same argument holds goods in the case of the ford. It is true that none but a very depraved man would suffer another to be drowned when he might prevent it by a word. But if we punish such a man where are we to stop? How much exertion are we to require? Is a person to be a murderer if he does not go fifty yards through the sun of Bengal at noon in May in order to caution a traveller against a swollen river? Is he to be a murderer if he does not go a hundred yards? if he does not go a mile? if he does not go ten? What is the precise amount of trouble and inconvenience which he is to endure? The distinction between the guide who is bound to conduct the traveller as safely as he can, and a mere stranger, is a clear distinction. But the distinction between a stranger who will not give a halloo to save a man's life, and a stranger who will not run a mile to save a man's life is very far from being equally clear.

"It is, indeed, most highly desirable that men should not merely abstain from doing harm to their neighbours, but should render active services to their neighbours. In general however the Penal law must content itself with keeping men from doing positive harm, and must leave to public opinion, and to the teachers of morality and religion, the office of furnishing men with motives for doing positive good. It is evident that to attempt to punish men by law for not rendering to others all the service which it is their duty to render to others, would be preposterous. We must grant impunity to the vast majority of those

thereby caused. Z, believing the ground to be firm, treads on it, falls in, and is killed. A has committed the offence of culpable homicide.

(b) A knows Z to be behind a bush. B does not know it. A, intending to cause, or knowing it to be likely to cause, Z's death, induces B to fire at the bush. B fires and kills Z. Here B may be guilty of no offence; but A has committed the offence of culpable homicide.

(c) A, by shooting at a fowl with intent to kill and steal it, kills B, who is behind a bush, A not knowing that he was there. Here, although A was doing an unlawful act, he was not guilty of culpable homicide, as he did not intend to kill B, or cause death by doing an act that he knew was likely to cause death.

The 1st and 2nd Explanations appended to this Section lay down rules for the guidance of the Courts in determining certain cases in which the act causing death operates not alone but with other causes which contribute to bring about that result.

Explanation 1. A person who causes bodily injury to another who is labouring under a disorder, disease, or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death.

An offence affecting the life of a person who must soon die, either from a mortal disease or in the course of nature from old age and decay, is not a less offence than one which affects the life of a person in strong health. The offender causes death in the one case by accelerating that event by a few months or days or hours; in the other case, possibly he hastens the event by many years. The real difference between the two cases is not in point of law, but in respect of the degree of proof requisite to show the cause of death. For where the death

omissions which a benevolent morality would pronounce reprehensible, and must content ourselves with punishing such omissions only when they are distinguished from the rest by some circumstance which marks them out as peculiarly fit objects of penal legislation. Now, no circumstance appears to us so well fitted to be the mark as the circumstance which we have selected. It will generally be found in the most atrocious cases of omission: it will scarcely ever be found in a venial case of omission: and it is more clear and certain than any other mark that has occurred to us. That there are objections to the line which we propose to draw, we have admitted. But there are objections to every line which can be drawn, and some line must be drawn."

of a person who receives some bodily injury while labouring under a disease is the subject of enquiry, the Court in estimating the evidence must consider whether it is sufficiently proved which of the two causes, the disease or the bodily injury to the diseased person is the cause of his dying on the day when his death occurs. It is not necessary (if it were possible) that the evidence should enable the Court to apportion the two causes and the degree in which each of them contributes to the result. But the Court must be satisfied (1) that the *death at the time when it occurs* is not caused solely by the disease; and (2) that it is caused by the bodily injury to this extent, that it is accelerated by such injury. Suppose A is ill of small-pox, and Z gives him pills in such doses that the disease is aggravated and death is accelerated. Z has *caused death*, notwithstanding that it may be proved that A must have eventually died of the small-pox.

Explanation 2. Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented.

In the case supposed, of a bodily injury which when it is inflicted is the sole cause of death in operation, it is explained that although proof be given that the wound or other bodily injury if skilfully treated might not have resulted in death, yet if in fact death is the result, the wound *causes* death. And it does not avail the offender to prove that the first cause might have been removed or rendered inoperative by the application of proper remedies, and that death might thus have been prevented.

“Proper remedies and skilful treatment” may not be within the reach of the wounded man; or, if they are at hand he may be unable or unwilling to resort to them. But this is immaterial so far as relates to the due interpretation of the words “cause of death.” The primary cause which sets in motion some other cause,—as the severe wound which induces gangrene or fever,

—and the ultimate effect, death, are sufficiently connected as cause and effect, notwithstanding that the supervening sickness or disease might have been cured by medical skill. All that it is essential to establish is, that the death has been caused by the bodily injury, and, if there be any intervening cause, that it is connected with a sufficient degree of probability with the primary one.

Cases not reached by either of the above Explanations may occur, in which there will be some perplexity in determining the *cause of death*. Suppose a person who has received some slight wound or hurt resorts not to “proper remedies and skilful treatment,” but to some ignorant and unskilled adviser; and that, in consequence, the bodily injury is aggravated by the application of unwholesome salves and death ensues :—or suppose he drinks spirits immoderately in a hot climate :—or suppose he is carried to a hospital where erysipelas happens at the time to be prevalent, and catches the disorder and dies of it :—or again suppose the bodily injury renders the amputation of a limb necessary, and that the patient is soon afterwards attacked by some complaint innocuous to a person in sound health, but which proves fatal to him in his weakly condition. In all these cases, if no bodily injury had been received, the man would not have died; and it may therefore be said that the injury is in some sense the cause of death. But it seems indispensable that the death should be connected with the act of violence or other primary cause, not merely by a chain of causes and effects, but by such direct influence as is calculated to produce the effect without the intervention of any considerable change of circumstances.

In each of the instances we have last supposed, the bodily injury caused death under extraordinary circumstances. Its direct influence in producing that result was small, and the intervening circumstances which more immediately caused death could scarcely have been foreseen. Nevertheless the use of the words “to cause death” without qualification or exception,

brings such cases within this term of the definition of the offence of culpable homicide. The difference between these cases and others of less complexity is (as has before been observed) a matter to be considered by the Court in estimating the effect of the evidence. But it is difficult to conceive any evidence sufficient to establish an intention to cause death on the part of a person who inflicts a bodily injury which ends so unexpectedly in death.

It is the duty of the Court in every case of homicide carefully to investigate each link in the chain of causes which result in death. When the investigation has made clear the connexion between the first wrongful act of violence, &c. and the death, as cause and effect, there will still remain the all important inquiry concerning the criminal intention or knowledge of the accused person.

“ With the intention of causing death or with the knowledge,” &c. The most important consideration upon a trial for this offence is the intention or knowledge with which the act which caused death, was done. The intention to cause death or the knowledge that death will probably be caused, is essential and is that to which the law principally looks. And it is of the utmost importance that those who may be entrusted with judicial powers should clearly understand that no conviction ought to take place, unless such intention or knowledge can from the evidence be concluded to have really existed.

The existence of a particular evil motive such as hatred, avarice, jealousy, &c., is not necessary. It is no part of the definition of Culpable Homicide that the act which causes death should be a malicious act. Malice is not made a necessary ingredient. Whatever may be the motive which incites the action, and whether or not any motive whatsoever be discoverable, the question for investigation is this:—did the accused person intend to cause death, or a bodily injury likely to end in death; or did he know that death was a probable result of his act? If such was his purpose and design, or such his

knowledge,—and none of the General Exceptions of this Code are applicable,—the act is an offence within this definition, although there is no apparent motive for it. If this intention or knowledge is clearly shewn, it is needless to enquire into the motives. It must not, however, be forgotten that under certain circumstances the existence of a motive may become an important element in a chain of presumptive evidence, as tending to shew the intention of the accused person.

It may be asked with reference to the portions of the definition which have been last noticed, how can the existence of the requisite intention or knowledge be proved, seeing that these are internal and invisible acts of the mind? They can be ascertained only from external and visible acts. Observation and experience enable us to judge of the connection between men's conduct and their intentions. We know that a sane man does not usually commit certain acts heedlessly or unintentionally—and generally we have no difficulty in inferring from his conduct what was his real intention upon any given occasion.

The word “death” which has been previously explained to mean the death of a human being (Section 46), is further here explained, not to include as it is used in the definition of Culpable Homicide the death of an unborn child. So that to cause the death of a living child in the mother's womb is not to “cause death” within the terms of Section 299. According to the third explanation—

Explanation 3. The causing of the death of a child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born.

The life of the child while it remains wholly within the womb, is a part of the mother's life, and not a separate and distinct existence. But as soon as any part of the child (supposing that it is not a child already without life, a dead

foetus) has been brought forth from the womb, the child is accounted a living human being, to cause whose death may be culpable homicide.

It is further explained that this may be so, though the child may not have breathed. The mere fact of having breathed is a very uncertain indication of life in such cases, for it is well known that many children are wholly brought forth and eventually live, and yet do not breathe for some time after their birth.

It may be said that a child is not completely born until after the umbilical cord has been severed, notwithstanding that the mother has been completely delivered, and that the child is in existence. But it is obvious that to cause the death of such a child, ought to be deemed an offence of the same nature, as the causing of the death of a child one month, one year, or ten years old. The explanation expressly states that complete birth is not requisite. Instead of an uncertain period which it would be difficult to define satisfactorily, and which would, in many cases of infanticide greatly add to the difficulty of proof, a definite and readily ascertained point of time (that is, the time when any part of the child is brought forth) is fixed, to denote when the child may become a subject of culpable homicide.

If no part of the child has been brought forth, any bodily injury which it receives, however criminal, does not constitute an offence under this Section; though it may be an offence under subsequent provisions of the Chapter (see Sections 315 and 316)—and this, whether such injury prevents the child from being born alive, or causes the death of the child afterwards. If any part of the child has been brought forth, the causing of its death may amount to culpable homicide—not because the child in this state has *necessarily* and in all cases a more independent existence than while it is wholly unborn, or because it is now more likely to live than before (for the part first brought forth may be such as to put the child's life in great peril)—but, as we have already seen, because this is a definite period of time.

As to the person who causes death,—it is enough in this place to say that, in the absence of proof of unsoundness of mind, incapacity to know the nature of the act done, or of some other of those General Exceptions applicable to Homicide which declare the thing done not to be an offence, all persons who are liable to punishment under this Code may commit the offence of Culpable Homicide.

Of the nature of the act or of the illegal omission which causes the death, it is to be observed that no one of the endless variety of modes by which human life may be cut short before it becomes in the course of nature extinct, is excluded. It is not even necessary that there should be any external act of violence, or any act directly causing corporal injury. For where death is produced by the effect of mere words on the imagination or passions, the speaking or writing of those words may be an act within the definition. Nor is any limit fixed to the interval of time which may elapse between the doing of the act and the death which is thereby caused.

This unqualified use of the words “to cause death” is thus referred to by the original framers of the Code. “We long considered whether it would be advisable to except from this definition any description of acts or illegal omissions, on the ground that such acts or illegal omissions do not ordinarily cause death, or that they cause death very remotely. We have determined, however, to leave the clause in its present simple and comprehensive form.

“There is undoubtedly a great difference between acts which cause death immediately, and acts which cause death remotely ; between acts which are almost certain to cause death, and acts which cause death only under very extraordinary circumstances. But that difference, we conceive, is a matter to be considered by the tribunals when estimating the effect of the evidence in a particular case, not by the legislature in framing the general law. It will require strong evidence to prove that an act of a kind which very seldom causes death, or an act

which has caused death very remotely, has actually caused death in a particular case. It will require still stronger evidence to prove that such an act was contemplated by the person who did it as likely to cause death. But if it be proved by satisfactory evidence that death has been so caused, and has been caused voluntarily, we see no reason for exempting the person who caused it from the punishment of voluntary culpable homicide."

They further remark on the subject of death caused by the effect of words on the imagination or the passions. "The reasonable course, in our opinion, is to consider speaking as an act, and to treat A as guilty of voluntary culpable homicide, if by speaking he has voluntarily caused Z's death, whether his words operate circuitously by inducing Z to swallow poison, or directly by throwing Z into convulsions.

"There will indeed be few homicides of this latter sort. It appears to us that a conviction, or even a trial, in such a case would be an event of extremely rare occurrence. There would probably not be one such trial in a century. It would be most difficult to prove to the conviction of any Court that death had really been the effect of excitement produced by words. It would be still more difficult to prove that the person who spoke the words anticipated from them an effect which, except under very peculiar circumstances, and on very peculiar constitutions, no words would produce. Still it seems to us that both these points might be made out by overwhelming evidence; and, supposing them to be so made out, we are unable to perceive any distinction between the case of him who voluntarily causes death in this manner, and the case of him who voluntarily causes death by means of a pistol, or a sword. Suppose it to be proved to the entire conviction of a criminal court that Z, the deceased, was in a very critical state of health, that A, the heir to Z's property, had been informed by Z's physicians, that Z's recovery absolutely depended on his being kept quiet in mind, and that the smallest mental excitement would endanger his life, that A immediately broke into

Z's sick room, and told him a dreadful piece of intelligence which was a pure invention, that Z went into fits, and died on the spot, that A had afterwards boasted of having cleared the way for himself to a good property by this artifice. These things being fully proved, no judge could doubt that A had voluntarily caused the death of Z; nor do we perceive any reason for not punishing A in the same manner in which he would have been punished if he had mixed arsenic in Z's medicine. The general rule, therefore, which we propose is, that the question whether a person has by an act or illegal omission voluntarily caused death shall be left a question of evidence to be decided by the courts, according to the circumstances of every case."

In most cases the act which causes death is apparent and there can be no difficulty in connecting cause and effect, as where a man is stabbed or receives a deadly blow or wound. But in other cases, where the blow which is a primary cause is widely separated from its ultimate effect, death, the connection between them will admit of various degrees of probability: and so, where the death may have partially resulted from concurrent causes, or may have wholly resulted from independent causes.

Thus the deliberate use by a sane man of deadly weapons, the deliberate discharge of loaded firearms, leads at once to the inference that his intention was to cause death. No proof of intention beyond that which such an act of itself supplies is requisite; and a Court would, in such a case, convict the offender, because his intention to cause death is an inference to be drawn almost as a matter of law which no Court would be justified in disregarding. Where death is the natural and probable result of the act, no further proof of intention or knowledge should be required.

But this presumption of intention does not arise, or it ceases, when by other extrinsic evidence, the real nature of the act which causes death is explained. For instance, B may prove (*see* Illustration *b* of this Section) that he fired at a bush not

knowing Z to be behind it, and not intending or knowing it to be likely that any harm would ensue ; or he may prove that the discharge of the gun was accidental and not deliberate. In like manner, proof may be adduced to show that the death was caused by any other accident or misfortune, or that the act which caused death was justifiable under the circumstances.

It is also important to observe that the existence of intention or knowledge is not to be inferred unless death follows as a natural and probable consequence from the act. Therefore, where a deadly weapon is not used, but death is caused by a push or a blow, so slight as to be calculated to inflict upon a healthy person little more than momentary pain, yet causing death because the person struck was labouring under disease,—it would be unjust to infer intention or knowledge. In such a case the fatal consequences have been occasioned by a trivial act and are far from being the natural and probable consequences of such acts : and it is therefore fair to suppose in the absence of other proof, that the offender never contemplated such results as possible. In such cases it should be shown by extrinsic evidence what the real intent or knowledge was. It should be proved, for instance, if such an act is charged as murder, that the offender was well aware of the existence of the disease, and that the blow was designedly directed at the diseased part. Whenever death is the result of an act not calculated in the ordinary course of nature to cause death, it is especially incumbent on the Court, before convicting a person of the offence of culpable homicide, to satisfy itself by credible evidence that an intention to cause death, or a knowledge that the act was likely to cause death, really existed in the mind of the accused.

In that class of cases already mentioned in which the direct influence of the primary cause is small, the death occurring under extraordinary intervening circumstances to which alone it appears to be due, no presumption of intention or knowledge can be said to arise. The existence of intention or knowledge is not to be inferred in such cases, but to be proved specifically like any other substantive matter-of-fact. Hence arises a difficulty

in supporting a charge of culpable homicide, where death is caused under such circumstances. Cases of this class demand from the Court a most cautious and deliberate consideration,—first of the evidence adduced to show that death *has been caused* by the primary act or cause, and then of the evidence to prove the intention or knowledge with which that act was done. “It will require strong evidence to prove that an act of a kind which very seldom causes death, or an act which has caused death very remotely, has actually caused death in a particular case. It will require still stronger evidence to prove that such an act was contemplated by the person who did it as likely to cause death.” Without satisfactory evidence that death has been so caused and contemplated, no Court should convict an offender of culpable homicide.*

* In the note which has already been referred to, the Indian Law Commissioners, in alluding to the case of a person who dies of a slight wound which, from neglect, or from the application of improper remedies, has proved mortal, observe: “We see no reason for excepting such cases, from the simple general rule which we propose. It will, indeed, be in general more difficult to prove that death has been caused by a scratch, than by a stab which has reached the heart: and it will in a still greater degree be more difficult to prove that a scratch was intended to cause death, yet both these points might be fully established. Suppose such a case as the following. It is proved that A inflicted a slight wound on Z, a child who stood between him and a large property. It is proved that the ignorant and superstitious servants about Z applied the most absurd remedies to the wound. It is proved that under their treatment the wound mortified and the child died. Letters from A to a confidant are produced. In these letters, A congratulates himself on his skill, remarks that he could not have inflicted a more severe wound without exposing himself to be punished as a murderer, relates with exultation the mode of treatment followed by the people who have charge of Z, and boasts that he always foresaw that they would turn the slightest incision into a mortal wound. It appears to us that if such evidence were produced, A ought to be punished as a murderer.

“Again, suppose that A makes a deliberate attempt to commit assassination. In the presence of numbers he aims a knife at the heart of Z. But the knife glances aside, and inflicts only a slight wound. In such a case there is no doubt whatever as to the intention. Suppose that the person who received the wound is under the necessity of exposing himself to a moist atmosphere immediately afterwards, and that, in consequence, he is attacked with tetanus, and dies. Here again, however slight the wound may have been, we are unable to perceive any good reason for not punishing A as a murderer.”

likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Illustrations.

(a) A shoots Z with the intention of killing him. Z dies in consequence. A commits murder.

(b) A, knowing that Z is labouring under such a disease that a blow is likely to cause his death, strikes him with intention of causing bodily injury. Z dies in consequence of the blow. A is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health. But if A, not knowing that Z is labouring under any disease, gives him such a blow as would not in the ordinary course of nature kill a person in a sound state of health, here A, although he may intend to cause bodily injury, is not guilty of murder, if he did not intend to cause death, or such bodily injury as in the ordinary course of nature would cause death.

(c) A intentionally gives Z a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here A is guilty of murder, although he may not have intended to cause Z's death.

(d) A, without any excuse, fires a loaded cannon into a crowd of persons and kills one of them. A is guilty of murder, although he may not have had a premeditated design to kill any particular individual.

According to this definition, culpable homicide is murder, unless it be one of the mitigated descriptions of homicide mentioned in the five Exceptions which follow. The definition requires that we should consult,—first the definition of culpable homicide in the expanded form in which it appears in the present Section, and then the several Exceptions containing the mitigating circumstances which reduce the offence of murder to culpable homicide not amounting to murder.* Each of the

* It may be thought desirable in so important a matter not to define merely by inference. Generally speaking those who have to administer the law ought at once to be able to find in the definition of a crime, all its qualifications expressed plainly and completely in the definition itself. But the mode of description by reference to other clauses has an advantage over that of a simple definition of the offence of murder (if a simple definition can be devised): for should any words contained in such a definition be liable to misconstruction, an act of culpable homicide properly coming within the lower degree of that offence, might be brought within the definition of the higher. The act of taking human life is the same in all. The attention should, therefore, to avoid error, be drawn to all the circumstances that would bring the act into a lower degree of the offence, before the punishment due to the highest is inflicted, and the law should be so framed as to oblige those who administer it to make this examination. By this

four clauses of the Section requires that the act which causes death should be done intentionally, or with the knowledge or means of knowing that death is a natural consequence of the act. Each clause is explained by an illustration.

The fourth clause appears to be designed to provide for that class of cases where the acts resulting in death are calculated to put the lives of *many persons* in jeopardy without being aimed at any one in particular, and are perpetrated with a full consciousness of the probable consequence. As, for example, where death is caused by firing a loaded gun into a crowd, by poisoning a well from which people are accustomed to draw water, by opening the draw of a bridge just as a railway passenger train is about to pass over it. In such and the like cases, the imminently dangerous act, the extreme depravity of mind and the regardlessness of human life, properly place the crime upon the same level as the taking of life by deliberate intention.

The concluding words of this clause "and commits such act without any excuse, &c." probably refer to such an excuse as is contemplated by Section 81.

It will be noticed that this definition of murder does not recognize different degrees of the offence. The killing of a human being with the intention or knowledge mentioned in the definition, is not less murder when it is committed under such circumstances as show no specific intention to kill, than when it is perpetrated by means of poison, or lying in wait, or by any other kind of wilful, deliberate and premeditated killing. But the Courts in awarding punishment for murder (see Section 302) are enabled to distinguish between the several gradations of enormity which the cases may disclose.

We shall proceed to consider the Exceptions which contain the mitigating circumstances by which the offence of murder is reduced to culpable homicide, not amounting to murder.

Code no judge can condemn for murder, until he has examined all the lighter shades of homicide, and is convinced that the circumstances of the case do not bring the accused within any of the exceptions. The form of the law imposes this obligation.

Culpable homicide caused by provocation.

Homicide committed in the sudden heat of passion on great provocation is not murder, although it is an offence which ought to be punished, and which in some cases deserves severe punishment. We have seen that the immaturity of understanding, the unsoundness of mind, or, in certain cases, the intoxication, of the person doing an act, exempts him from all criminal responsibility in respect of the act, and its consequences. The law does not extend this exemption to the acts of those who are deprived by passion of the power of self-control; but it grants some indulgence to such persons. It punishes their acts, in order to teach men to entertain a peculiar respect for human life, and in order to give men a motive for accustoming themselves to govern their passions. But ordinarily it does not punish such persons as murderers, when they cause death. For anger is a passion to which good and bad men are both subject, and mere human frailty and infirmity ought not to be punished equally with ferocity or other evil feelings.

The Indian Law Commissioners, by whom the Code was framed, say—"In general we would not visit homicide committed in violent passion which had been suddenly provoked with the highest penalties of the law. We think that to treat a person guilty of such homicide as we should treat a murderer, would be a highly inexpedient course—a course which would shock the universal feeling of mankind, and would engage the public sympathy on the side of the delinquent against the law."

Exception 1. Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation, or causes the death of any other person by mistake or accident.

Explanation. Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

Illustrations.

(a) A, under the influence of passion excited by a provocation given by Z, intentionally kills Y, Z's child. This is murder, inasmuch as the provocation was not given by the child, and the death of the child was not caused by accident or misfortune in doing an act caused by the provocation.

(b) Y gives grave and sudden provocation to A. A, on this provocation, fires a pistol at Y, neither intending nor knowing himself to be likely to kill Z, who is near him, but out of sight. A kills Z. Here A has not committed murder, but merely culpable homicide.

“Deprived of self-control.” When the derangement of the mind reaches that degree that the judgment and reason cease to hold dominion over it,—their authority being suspended and yielding place to violent and ungovernable passion,—the man who was before a rational being is no longer the master of his own understanding, becomes incapable of cool reflection, and ceases to have control over his passions. It is to such a state of mind that the law in judging of acts which cause death, gives indulgent consideration. And no mental perturbation or agitation which falls short of this, and leaves sway to reason and the power of self-control, can reduce a murder to an offence within the range of this mitigating exception.

Terror or fear, no less than anger, may deprive a man of the power of self-control.

“Grave and sudden provocation.” It is not a sufficient extenuation that the act is done under the influence of passion or some other feeling which takes away the power of self-control. The passion, &c. must have an adequate cause.

The Code does not attempt to enumerate or define what causes shall be admitted to be adequate causes. It declares only that the excitement or want of self-control must proceed from grave and sudden provocation: and it then leaves it to the Court to decide as a question of fact, whether the provocation was grave and sudden enough to prevent the offence from amounting to murder. The general principle being ascertained to be the loss of self-control arising from great

human infirmity,—which is so general, and almost universal as to render it proper to make allowance for it in admeasuring punishment,—the subject is left to be dealt with in each particular case as a matter of fact unfettered by arbitrary distinctions. But notwithstanding that it is declared to be a question of fact, it is not to be supposed that in a matter so important the mere private opinion of each judicial officer is the true rule of judgment. Certain general rules for the guidance of his discretion must be recognized, although, subject to them, each case is to be disposed on a due consideration of its special circumstances.

Bearing in mind that the exception is founded upon a principle of indulgence shewn by the law to human frailty but not to human ferocity,—it may be safely laid down that the provocation which is allowed to extenuate, must be something which a man is conscious of, and which he feels keenly, and resents, at the instant the act which he would extenuate is committed. A permanent subjection to a wicked and cruel disposition does not mitigate or excuse an offence. So, if the act can be traced to a previous brutal malignity, and not merely to the influence of passion arising from provocation, however grave and sudden the provocation, it will not extenuate.

Sometimes the act itself must point to a previous determination to murder. Suppose B is poisoned by A. It is proved that A had previously bought the poison and prepared the cup, but that at or immediately before the time of administering it, he received from B in a quarrel, grave and sudden provocation in the shape of severe blows. The blows are not to be allowed to cloak what he does, if it is evident (as it probably would be) that what he does is not done in consequence of the blows, but in consequence of his previous design to cause death. His mind may be agitated at the time : but this is not enough, if the act is not done in consequence of such agitation. Thought, contrivance, and design, shewn by preparations made before any provocation, tend to shew that his subsequent act proceeds from his predetermination, and that it is the result of judgment

and reason. The fatal act cannot in such a case be supposed to be owing to want of self-control caused by the excitement.

As to what acts amount to a provocation *grave* as well as sudden,—this is a question of fact to be determined on the evidence, and no restrictive or exclusive rule can be admitted. It would seem that the particular temperament of the person provoked, whether this be known or unknown to the provoker, is not wholly to be disregarded. But even if we assume that no allowance can be made for this, and that the provocation must be of that nature and degree which commonly produces in men of ordinary tempers an irritation of mind which renders them incapable of calculating the consequences of their acts, there are some provocations which cannot but be allowed by common consent to be grave enough to mitigate homicide. On the other hand there are many trivial, and some considerable, provocations which will not probably be deemed sufficient to extenuate an act of homicide upon a view of the whole of the facts of the case in which they occur.

If a person strikes another with a deadly weapon, or assaults him with blows causing great bodily pain or bloodshed,—or if he in a serious personal conflict assails him, having a great superiority of personal strength or skill,—the provocation would seem sufficiently grave to extenuate. So a blow given to a man's wife or child may well be deemed to have the same provocative power as one given to himself. The discovery of the wife of the accused in the act of adultery with the person killed, is generally admitted to be an adequate cause of provocation. And any like grievous outrage, although wounding only the honor and the affections, may be thought cause sufficient. On this subject, after referring to the case of this paramour caught in the act of adultery, the Indian Law Commissioners say—“We must own that we can see no reason for making a distinction between this provocation and many other provocations of the same kind. We cannot consent to lay it down as an universal rule that in all cases this provocation shall be considered as an adequate provocation. Circumstances may

easily be conceived which would satisfy a Court that a husband had in such a case acted from no feeling of wounded honor or affection, but from mere brutality of nature, or from disappointed cupidity. On the other hand, we conceive that there are many cases in which as much indulgence is due to the excited feelings of a father, or a brother, as to those of a husband. That a worthless, unfaithful, and tyrannical husband should be guilty only of manslaughter for killing the paramour of his wife, and that an affectionate and high-spirited brother should be guilty of murder for killing in a paroxysm of rage the seducer of his sister, appears to us inconsistent and unreasonable.

“ There is another class of provocations which some jurists do not allow to be adequate in law, but which have been, and, while human nature remains unaltered, will be adequate in fact to produce the most tremendous effects. Suppose a person to take indecent liberties with a modest female in the presence of her father, her brother, her husband, or her lover. Such an assault might have no tendency to cause bodily pain, or danger; yet history tells us what effects have followed from such assaults. It is difficult to conceive any class of cases in which the intemperance of anger ought to be treated with greater lenity. So far, indeed, should we be from ranking a man who causes death under such provocation with murderers, that we conceive that a Judge would exercise a sound discretion in sentencing such a man to the lowest punishment fixed by the law for manslaughter.”

It seems that an assault which is in itself slight and does not cause great bodily pain, but which is accompanied by words of menace, threats or other circumstances indicating an intention to inflict such pain, would be deemed provocation sufficient. On the other hand, a mere trespass or injury to lands or goods, a breach of a man's word or promise, words of reproach (including *the* word of denial), mere words of menace of bodily harm, rant, expressions of contempt, indecent and provoking actions or gestures,—these, supposing them to be unaccom-

panied by any act showing a present intention to commit a grievous personal injury, have not ordinarily been regarded as sufficient provocation to extenuate the depriving a man of his life. And it must be admitted that violent acts of resentment which bear no proportion to the provocation or insult received, proceed rather from brutal malignity than human frailty, and ought not to be extenuated.

But, inasmuch as the principle of extenuation is founded on the want of self-control actually occasioned by the provocation, whatever it may be, it must not be forgotten that gross insults by words, gesture, or even caricature, may have as potent a tendency as bodily injuries to move some persons on a sudden to violent passion.* Moreover the intensity of the provocation may depend less on words or blows than on the state of feelings or health of the person provoked. Severe bodily pain may render a person

* The Indian Law Commissioners in stating their opinion that no good reason can be assigned for making any distinction between cases in which the provocation proceeds from mere words or gestures of insult and cases in which it proceeds from dangerous or painful bodily injuries inflicted, observe, "It does not appear to us that passion excited by insult is entitled to less indulgence than passion excited by pain. On the contrary, the circumstance that a man resents an insult more than a wound is anything but a proof that he is a man of peculiarly bad heart. It would be a fortunate thing for mankind if every person felt an outrage which left a stain upon his honor more acutely than an outrage which has fractured one of his limbs. If so, why should we treat an offence produced by the blameable excess of a feeling which all wise legislators desire to encourage, more severely than we treat the blameable excess of feelings certainly not more respectable?"

Referring to the state of society in India they say, "There is perhaps no country in which more cruel suffering is inflicted, and more deadly resentment called forth, by injuries which affect only the mental feelings. A person who should offer a gross insult to the Mahomedan religion in the presence of a zealous professor of that religion, who should deprive some high-born Rajpoot of his caste, who should rudely thrust his head into the covered palanquin of a woman of rank, would probably move those whom he insulted to more violent anger than if he had caused them some severe bodily hurt. That on these subjects our notions and usages differ from theirs is nothing to the purpose. We are legislating for them, and though we may wish that their opinions and feelings may undergo a considerable change, it is our duty, while their opinions and feelings remain unchanged, to pay as much respect to those opinions and feelings as if we partook of them. We are legislating for a country where many men, and those by no means the worst men, prefer death to the loss of caste; where many women, and those by no means the worst women, would consider themselves as dishonored by exposure to the gaze of strangers: and to legislate for such a country as if the loss of caste, or the exposure of a female face, were not provocations of the highest order, would, in our opinion, be unjust and unreasonable."

so susceptible of passion that a small matter may excite him violently.

When the plea of provocation caused by insulting words, signs or gestures is offered in mitigation of homicide, the administrators of the law may properly reject it in one case, and as properly admit it in another, according to the character and condition of the person who offers it. The framers of the Code lay down no rule that insults by words or gestures shall necessarily be considered an adequate cause of provocation, while for the reasons assigned by them they think it proper to recognize and allow the provocative force of such insults. The great mass of the people are accustomed to the use of insulting words and the display of contemptuous gestures. It is notorious that among them this is the most common mode of offering insult. Foul language and indecent gestures, in consequence, lose much of their offensiveness to them. On the other hand there are doubtless very many persons so sensitive in their feelings that such insults, or even an indignity offered by a reflection upon their integrity, an imputation upon their courage, &c., might excite in them sudden and uncontrollable gusts of passion.

Cases may occur of homicide committed in some manner or by some instrument not likely to cause death, and upon provocation of a slighter kind than can be considered grave. In such cases, it is first to be considered and ascertained whether the homicide is a *culpable* homicide,—or, in other words, whether the act was done with that intention to cause death, or knowledge that death was a probable result, which is a necessary part of the offence of culpable homicide. If it was not, no question can arise under this or any of the subsequent Exceptions.

“Whilst deprived of the power of self-control, &c.” If the act is not done under the immediate influence of the excitement, but after such an interval of time as in the common course of human feelings is sufficient for reflection, or with the interven-

tion of such circumstances as must naturally produce reflection; the exception is inapplicable. However great the provocation, if there is time enough for passion to subside and for reason to interfere and to regain her dominion, the homicide will be murder.

If a man finding another in the act of adultery with his wife, kills him at the time, the provocation would ordinarily be deemed sufficient to excuse or mitigate his offence. But if he kills the adulterer, deliberately and in revenge, after a considerable interval of time has elapsed, this would probably be held to deprive him of the benefit of the exception. The question whether any act of provocation is grave or sudden enough to mitigate an offence is always, it should be remembered, a question of fact, and not one of law.

Sometimes the act itself which causes death is so deliberate that it cannot proceed merely from the reason being suspended owing to the grave and sudden provocation. Thus putting a rope round the neck of a man who has been knocked down, and strangling him,—or procuring a deadly weapon, thought and contrivance being shewn in doing this after provocation given, and again replacing it immediately after the blow has been struck,—in both these cases the act is done from some cause beyond the sudden provocation. The length of time will always be an important consideration in such cases; and the distance travelled. The existence of an old grudge is also important.

With respect to the interval of time allowed for passion to subside, it has been observed, that it is much easier to lay down rules for determining what cases are without the limits, than how far exactly those limits extend. It must be remembered, that in these cases the immediate object of enquiry is, whether the suspension of reason arising from sudden passion continued from the time of the provocation received, to the very instant of the mortal stroke given. For if, from any circumstance whatever, it appears that the party reflected, deliberated, or cooled, any time before the mortal stroke given, or if there was time or opportunity for cooling, the killing will amount to

murder, it being attributable to malice and revenge, rather than to human frailty. The following are stated as general circumstances amounting to evidence in disproof of the party's having acted under the influence of passion only. If, between the provocation received and the stroke given, the party giving the stroke fall into other discourse or diversions and continue so engaged, during a reasonable time for cooling; or if he take up and pursue any other business or design not connected with the immediate object of his passion, or subservient thereto, so that it may be reasonably supposed that his intention was once called off from the subject of his provocation; or again, if it appear that he meditated upon his revenge, or used trick or circumvention to effect it, which shows a deliberation inconsistent with the excuse of sudden passion;—in these cases the killing will amount to murder. It may further be observed, in respect to time, that in proportion to the lapse of time between the provocation and the stroke, less allowance ought to be made for any excess of retaliation, either in the instrument or the manner of it. The mere length of time intervening between the injury and the retaliation is evidence in itself of deliberation.

“Causes the death of the person who gave the provocation” (see the Illustrations given below).

This Exception, unlike the General Exceptions of Insanity, Infancy, &c., holds good only against certain persons. Provocation will not mitigate or excuse an act which proceeds from a general determination to injure any man who may come in the offender's way. Suppose a person under provocation to declare that he will stab any man entering or leaving a room,—or that if any man strikes him he will make him repent it,—this exception would not avail him, except as against the person provoking him.

“Or causes the death of any other person by mistake or accident.” The following Illustrations are given.

(a) A, under the influence of passion excited by a provocation given by Z, intentionally kills Y, Z's child. This is murder, inasmuch

as the provocation was not given by the child and the death of the child was not caused by accident or misfortune in doing an act caused by the provocation.

(b) Y gives grave and sudden provocation to A. A, on this provocation, fires a pistol at Y, neither intending nor knowing himself to be likely to kill Z, who is near him, but out of sight. A kills Z. Here A has not committed murder, but merely culpable homicide.

Passion against one man will not qualify or bring within the exception the homicide of another, unless it proceeds from accident or mistake (see Section 80) ; as if the blow aimed at one alights on another. Cases like those which are not unfrequent of a person under excitement running amuck and killing all whom he meets, are not mitigated by this exception.

Where several persons are concerned in the commission of the criminal act which causes death, they may be guilty of different offences by means of that act (see Section 38). In the illustration (f) appended to the exception now under consideration which is quoted below. A the bystander abets B by intentionally aiding him.

It will be borne in mind that it is not necessary that the person abetted should have the same guilty intention as that of the abettor (see Section 108, Explanation 3).

The above exception is subject to the following provisos :—

First. That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

(f) Z strikes B. B is by this provocation excited to violent rage. A, a bystander, intending to take advantage of B's rage, and to cause him to kill Z, puts a knife into B's hand for that purpose., B kills Z with the knife. Here B may have committed only culpable homicide, but A is guilty of murder.

The provocation, however grave and sudden in itself, is not to cloak an act which really proceeds from previous deliberation and design.

Suppose A and B having quarrelled, A says he will not strike but will give B a rupee if he dares to touch him, on which B strikes and A kills him,—or A otherwise invites B to some act of

provocation and then kills him for it :—the act being done by A's consent or invitation, given with a view to excuse what he deliberately proposes to do in return, is not a sufficient provocation. Again A without consent or invitation may *voluntarily* (that is intentionally or by means which he knows to be likely to have the effect) offer provocation: as by introducing in general discourse topics known to be offensive, touching a man's domestic affairs, &c. Ordinarily a provocation sought on the part of the slayer would seem rather to aggravate than to mitigate his offence.

Where the act which causes death appears to be the consequence of premeditation, the exception is inapplicable whether the provocation is sought for or not. If the act does not in truth proceed from the provocation or its consequence, *i. e.* the deprivation of the power of self-control, it is not mitigated.

Secondly. That the provocation is not given by anything done in obedience to the law or by a public servant in the lawful exercise of the powers of such public servant.

(c) A is lawfully arrested by Z, a bailiff. A is excited to sudden and violent passion by the arrest, and kills Z. This is murder, inasmuch as the provocation was given by a thing done by a public servant in the exercise of his powers.

(d) A appears as a witness before Z, a Magistrate. Z says that he does not believe a word of A's deposition and that A has perjured himself. A is moved to sudden passion by these words, and kills Z. This is murder.

A man is not allowed to extenuate murder, however great the provocation he has received, if the provocation be given by public servants or other persons who are acting in obedience to the law's commands or are justified by law, or if the provocation be given by public servants in the lawful exercise of their powers. Ministers of Justice especially, and all public servants while in the execution of their offices, are under the peculiar protection of the law. And this protection is not confined to them, but extends to private persons who come to their aid and act by their direction.

We have seen that under the General Exceptions of the Code not only public servants, but all persons, are justified in respect of acts which the law commands or authorizes them to do. (See Sections 76—79.) Their acts being justified, it follows that resistance is unlawful, and that such acts afford no legal ground of provocation. This is founded in reason and public utility. A man would not quietly submit to an arrest, if the lawful acts of the person empowered to make the arrest should be held to mitigate his homicide by the person to be arrested. The consequence would be, that in every case of resistance the officer would desist and leave the business undone. It is plain that if the State makes it the duty of A, a police constable, to arrest B, it would be unjust to A, and would paralyze the administration of the law, if it were justifiable for B to kill A on the plea of provocation, &c.

But the protection of the law being in general extended only to persons who have lawful authority, and who use that authority in a proper manner, this proviso confines within the same limits, those acts which shall be deemed not to constitute a sufficient provocation. Questions of much nicety and difficulty may often arise touching the legality of process, regularity of the proceeding, and, in the case of public servants, notice of the character in which they act, &c.

But the homicides which in their circumstances fall within the operation of this proviso, are those only in which the public servant or other person killed has not gone beyond the law in doing that which has caused the provocation. It will happen usually in such cases, that before the blow or other act which causes death, there have been acts of violence on both sides,—force used and repelled by force, the blood already heated kindling afresh at every blow, until in the tumult of passion the voice of reason is not heard. Suppose the public servant or other person acting in obedience to the law is met with violence, and in opposition to such violence and in self-defence strikes a blow, and then is killed by his antagonist. The blow struck under such circumstances should be regarded as struck

not vindictively or by way of punishment, or for the purpose of offence, but in self-defence only, and to diminish the violence which is unlawfully brought into operation against him. It cannot therefore be any such provocation as will mitigate murder.

But if the public servant or other person uses a force or violence unnecessary, and not justified by law, this provision will not operate to prevent due weight being given to such acts by the Court in considering the question of fact,—that is to say in considering whether the provocation was not grave enough to prevent the offence from amounting to murder. Thus, if a police officer make an arrest not in a manner authorized by law, but violently by knocking down the person to be arrested, provocation so given would not come within this proviso.

It will be remembered that acts “not strictly justifiable by law” (if they do not cause the apprehension of death or of grievous hurt), done in good faith, and under colour of office by or by direction of a public servant, are protected to this extent that there is no right of private defence against them. (See Section 99.) But such acts seem not to fall within the terms of this proviso concerning provocation.

Nothing is expressed in the proviso to limit its operation to cases in which a person has notice or knowledge of the character of his opponent i. e. that he is a public servant, or that he is a person acting under the authority of a public servant, or under some lawful power or authority. When the provocation is given by a private person acting in obedience to law, it may be that a knowledge of the law must be presumed and that notice of his authority is not requisite. But when the provocation proceeds from a thing done by, or by direction of, a public servant, it seems just to hold that (as in other analogous cases, see Sections 99, 183, &c.) some knowledge, or reason for belief, that the person resisted fills a particular character or office, is essential.

Thirdly. That the provocation is not given by

anything done in the lawful exercise of the right of private defence.

(c) A attempts to pull Z's nose. Z, in the exercise of the right of private defence, lays hold of A to prevent him from doing so. A is moved to sudden and violent passion in consequence, and kills Z. This is murder, inasmuch as the provocation was given by a thing done in the exercise of the right of private defence.

The Chapter of General Exceptions defines, with such precision as the subject admits of, the limits of the right of private defence, and in what cases it extends to causing death. (See Sections 96—106.) The right being thus given by law, the case is withdrawn from the operation of the present exception. When the acts which are supposed to provoke, are acts of resistance which the law allows, it cannot also allow such resistance to be regarded as a provocation sufficient to mitigate or excuse the commission of homicide. Suppose a police officer in the lawful exercise of his powers arrests A who, not knowing and not having reason to know his intention, resists the arrest but without needless violence. This resistance is as yet lawful in respect of its falling within the limits of A's right of self-defence. (See Section 99.) But suppose further that the officer repels the force used against him by greater force, and is thereupon killed by A. (See Section 100.) Here A's conduct may be wholly justifiable: or if he has exceeded the limits of self-defence and has committed culpable homicide, his offence may admit of mitigation by reason of the provocation given, (see the next Exception). But if the officer, excited by the provocation received from A, had killed him, he would be entitled to no benefit from this first Exception.

Exception 2. Culpable homicide is not murder if the offender in the exercise, in good faith, of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

Illustration.

Z attempts to horsewhip A, not in such a manner as to cause grievous hurt to A. A draws out a pistol. Z persists in the assault. A, believing in good faith that he can by no other means prevent himself from being horsewhipped, shoots Z dead. A has not committed murder, but only culpable homicide.

This Exception applies where death is caused by an act which is done in the exercise of the right of private defence, but which is not a lawful act, because it exceeds the limits assigned by law to that right.

The law in certain cases allows a man to cause the death of another man in self-defence. In these cases no offence is committed, and there can of course arise no question as to the culpability of the homicide. In other cases, the law limits the right of private defence to the causing of any harm other than death. It is with reference to such cases that this Exception must be considered; for it applies only to homicides caused by an excessive and unjustifiable exercise of this limited right of private defence. The tendency of this provision is to favor persons who have been led in an energetic exercise of the right of defence to step beyond the prescribed line.

This Exception is closely connected with the law of private defence, and must necessarily partake of the imperfections of that law. The Indian Law Commissioners observe, "Wherever the limits of the right of private defence may be placed, and with whatever degree of accuracy they may be marked, we are inclined to think that it will always be expedient to make a separation between murder and culpable homicide in self-defence.

"The chief reason for making this separation is that the law itself invites men to the very verge of the crime which we have designated as culpable homicide in defence. It prohibits such homicide indeed. But it authorizes acts which lie very near to such homicide. And this circumstance we think greatly mitigates the guilt of such homicide. That a man who deliberately kills another in order to prevent that other from pulling his nose should be allowed to go absolutely unpunished would be most dangerous. The law punishes and ought to

punish such killing. But we cannot think that the law ought to punish such killing as murder. For the law itself has encouraged the slayer to inflict on the assailant any harm short of death which may be necessary for the purpose of repelling the outrage, to give the assailant a cut with a knife across the fingers, which may render his right hand useless to him for life, or to hurl him downstairs with such force as to break his leg. And it seems difficult to conceive that circumstances which would be a full justification of any violence short of homicide should not be a mitigation of the guilt of homicide. That a man should be merely exercising a right by fracturing the skull and knocking out the eye of an assailant, and should be guilty of the highest crime in the Code if he kills the same assailant, that there should be only a single step between perfect innocence and murder, between perfect impunity and liability to capital punishment, seems unreasonable. In a case in which the law itself empowers an individual to inflict any harm short of death, it ought hardly, we think, to visit him with the highest punishment if he inflicts death."

"It is to be considered also that the line between those aggressions which it is lawful to repel by killing, and those which it is not lawful so to repel, is in our Code, and must be in every Code, to a great extent an arbitrary line, and that many individual cases will fall on one side of that line which, if we had framed the law with a view to those cases alone, we should place on the other. Thus we allow a man to kill, if he has no other means of preventing an incendiary from burning a house : and we do not allow him to kill for the purpose of preventing the commission of a simple theft. But a house may be a wretched heap of mats and thatch, propped by a few bamboos, and not worth altogether twenty Rupees. A simple theft may deprive a man of a pocket-book which contains bills to a great amount, the savings of a long and laborious life, the sole dependence of a large family. That in these cases the man who kills the incendiary should be pronounced guiltless of any offence, and that the man who kills the thief should be sen-

tenced to the gallows, or if he is treated with the utmost lenity which the Courts can show, to perpetual transportation or imprisonment, would be generally condemned as a shocking injustice. We are therefore clearly of opinion that the offence which we have designated as culpable homicide in defence, ought to be distinguished from murder in such a manner that the Courts may have it in their power to inflict a slight or a merely nominal punishment on acts which, though not within the letter of the law which authorizes killing in self-defence, are yet within the reason of that law."

There must be a fit occasion for the exercise of the right before any question can arise under this Exception. Suppose a man having no pretence for so acting, enters the house of another against his will and refuses to quit, whereupon the owner, using no force or violence beyond what the occasion calls for, proceeds to eject him. If the intruder resists and so causes the death of the owner of the house, the homicide is not extenuated by this Exception, for the intruder's acts were not done in the exercise of any right or lawful power, but were wholly illegal. On the other hand, if under similar circumstances the owner of the house used unnecessary violence to the trespasser and thereby caused his death, this Exception would be applicable.

The following cases will further illustrate the exception. A, finding B plucking stakes from his hedge or trampling on his crops, deliberately fires a gun at him, or uses a deadly weapon to punish him. This degree of violence is not justifiable (see Section 103). And B, notwithstanding his wrongful act, may protect himself and his life against it. The right of defence under such circumstances arises to him, and he may repel force by force. And should he cause A's death, the homicide will be mitigated under the present Exception.

Suppose a parent, master, guardian, &c., chastises with great severity, in a cruel and unusual manner, his servant, pupil, &c., and the latter resents the act and causes death. He may claim the benefit of this Exception. For a power lawful within certain

limits may, if exercised oppressively be resisted by the sufferer : and if, in defence of himself against oppression, he causes death under circumstances which, because of the excess of force, are not justifiable, his offence may still be entitled to mitigation.

This Exception like the preceding one is not to be made a cloak for premeditated crime. If A strikes B, intending and foreseeing that B will resent it in such a mode as to justify A in resorting to self-defence, under cover of which he designs to take B's life, this exception does not apply. Nor does it where great violence is resorted to and death is thereby caused upon a trivial occasion.

It is enacted by one of the General Exceptions (Section 79) that nothing is an offence which is done by a person who by reason of a mistake of fact believes himself to be justified by law in what he does. There may, it seems, be cases of homicide in the exercise of the right of private defence to which this General Exception rather than the particular Exception now under consideration is applicable. A person who in good faith exceeds the strict limits of the right of self-defence, under a mistake of fact as to the degree of force which is opposed to him and what is requisite to repel such force, is probably excused under the 79th Section.

Exception 3. Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.

This Exception extenuates certain acts of public servants in excess of their lawful powers. Death caused by such acts,—done in good faith and without ill-will, for the advancement of public justice,—is excused because it would be unjust to hold that those persons upon whom the law imposes certain duties which they are bound to discharge, are to be punished as murderers

because they may have undesignedly or incautiously overstepped the limits of their authority.

“Public servant acting for the advancement of justice.” The explanation of the words “public servant” (see Section 21) makes the expression to include a large class of persons, of whom those only are here included who act “for the advancement of justice.” Without attempting to enumerate who may come within these terms it seems clear that officers of police, both civil and military,—ministerial officers of Courts of Justice, jailers, &c., acting in the execution of their respective duties are within its meaning. On the other hand, persons invested with rights to collect and distribute the revenue of the State, customs officers, revenue and survey officers, the Municipal Commissioners in the Presidency Towns and their servants, &c. are not, while executing their *principal and appropriate* duties, included.

This Exception will be applicable to cases in which peace officers cause death either in keeping the peace or in executing criminal process. In these and all other cases to which the Exception applies, the public servant will be regarded as acting in advancement of justice, not only while actually engaged in his duty of keeping the peace, suppressing an affray, serving process, &c., but also while going to and returning from the place to which his duty calls him. Therefore if he comes to do his duty and, meeting with opposition on the way, uses a degree of violence to overcome it, beyond that which the law permits, and thereby causes death,—his offence will not amount to murder if he acts in good faith according to his view of what is lawful and necessary.

“Exceeds the powers given to him by law, &c.” No case arises for the operation of this Exception, when the conduct of the public servant is wholly illegal and unauthorized. For although the law is not extreme to mark with severity what has been honestly done by a public servant in the discharge of his duties, yet if he take on himself to act for the advancement of justice without any colour of authority, or grossly in excess of his lawful powers, he forfeits the protection of the Exception.

It must be ascertained carefully in each case what are the powers and privileges which the public servant possesses, and what is the nature of his conduct in the matter wherein he has exceeded those powers. The following Sections of the Code should also be consulted. Sections 52, 76—79 and 99.

A has a warrant for the arrest of B, who runs away to avoid the arrest. He is pursued by A, who trips him up or strikes him to prevent his escape, and kills him. If in respect of this excess, A should be deemed to have committed culpable homicide, this Exception will extenuate his offence so far as to prevent it amounting to murder. But suppose a defect or irregularity in the process, or a mistake in good faith by which B is taken for C the person really named in the warrant. In such a case, the offence of A is, it is conceived, not the less within the present exception. For although his lawful authority, so far as it is derived from the warrant, fails him, yet he has the protection of certain provisions (see Sections 76 and 78) which give to his act sufficient legal effect or validity to prevent this excess from being punished as if he had committed murder or from being punished otherwise than under the present Section.

“Without ill-will towards the person whose death is caused.” This expression seems intended, like others in former exceptions, to guard against the application of the exception to cases in which it might be sought to use it to cloak such acts of violence as make an offender really a murderer.

Those who give their aid to public servants acting for the advancement of public justice, are entitled to the benefit of this exception.

The Explanation of the words “good faith” should be referred to. (See Section 52).

Exception 4. Culpable homicide is not murder if it is committed without premeditation in a sudden fight, in the heat of passion, upon a sudden quarrel, and without the offender’s having taken undue advantage or acted in a cruel or unusual manner.

Explanation. It is immaterial in such cases which party offers the provocation or commits the first assault.

This Explanation directs the attention to the distinction between the present and some of the preceding Exceptions. In many cases of mutual contest, homicide caused by the person who received the first blow or the provocation, would, under those Exceptions, have been extenuated: but if that person's death had been caused by his opponent, the offence would not have been within reach of any mitigating provision. The present Exception is meant to apply to cases in which, notwithstanding that a blow may have been struck or some provocation given in the origin of the dispute,—or in whatsoever way the quarrel may have originated,—yet the subsequent conduct of both parties puts them in respect of guilt upon an equal footing. For there is a mutual combat, and blows on each side: and however slight the first blow or provocation, every fresh blow becomes a fresh provocation. The blood already heated warms at every subsequent stroke, and the voice of reason is heard on neither side in the heat of passion. Under such circumstances there cannot be much room for discriminating between the respective degrees of blame with reference to the state of things at the commencement of the fray.

In such cases, words or gestures of reproach, of contempt, &c. or some act of provocation of no serious kind, lead to blows, and then to mutual combat which is sudden and without pre-conceived intention. The resentment generally is of such a kind as to bear some proportion in the degree of it, and in the weapons which are used, to the provocation. A sudden quarrel excites the anger of the persons engaged in it. In the heat of passion blows are interchanged (being given and taken), and in this sudden and unpremeditated fight, death is caused.

“Sudden quarrel” and “sudden fight.” The stress which is laid upon this is to be remarked. The degree or kind of provocation does not so much enter into consideration here as

the suddenness of the dispute and of the fight which follows. The lapse of time between the quarrel and the fight is therefore a very important consideration.

It may be material also to inquire what were the previous relations between the disputants. If the persons are strangers to each other, until the time of quarrel, and have no previous cause of contention, the fight will probably be "in the heat of passion upon a sudden quarrel" within this Exception. Still more so, if they have lived previously upon terms of intimacy or friendship, and no cause of contention has arisen. But where there has been an old quarrel between A and B, the Court should narrowly examine the circumstances of this seemingly new and sudden falling out, to ascertain that it is not really the continuance of the old feud. If there has since been a true reconciliation the old enmity should not be considered. But if the circumstances show that the reconciliation was pretended or counterfeit, the quarrel cannot be held "sudden," within this exception.

The following illustration shows the operations of the exception. A and B, having no previous enmity against one another, meet and, some cause of dispute arising, quarrel and fight upon the spot. If death ensues in fair fight, this homicide does not amount to murder, and it matters not who gave the first blow or the provocation. But if they quarrel over night and agree to fight next day, or quarrel in the morning and agree to fight in the afternoon, however sudden the quarrel, the fight is not sudden, but a deliberate act previously appointed and arranged and the homicide will be murder.

Upon this ground the causing of death in a deliberate duel cannot fall within this mitigating exception. In duels there is usually deliberate fighting in cold blood, and after a certain lapse of time from the injury done or the cause of quarrel. Such a duel cannot be called a sudden fight without premeditation. Even if the fighting follows immediately upon the quarrel, or so quickly after it that the heat of passion has not subsided, a duel or other contest with deadly weapons, although

fought suddenly and without premeditation, would perhaps not be deemed within this Exception.

“Without the offender’s having taken undue advantage,” &c. The fight must be a fair fight as well as a sudden one. And it cannot be so unless the parties stand upon some footing of equality as regards arms, bodily strength, and preparedness for the combat. Suppose a sudden quarrel between a powerful man, with arms in his possession, and a decrepit person, or a defenceless woman. The man using his arms against such opponents would be guilty of murder if he caused their death.

It must not, however, be supposed that the exception applies only to cases in which each party to the combat is equally matched in point of muscular strength, skill, arms, &c. For where there is no manifestly gross inequality, minute differences in bodily strength or in other particulars should not be deemed sufficient to remove the case from the operation of this Exception.

“Undue advantage,” may consist in this that at the onset there is some conduct which puts the combatants upon an unequal footing. A attacks B suddenly and when B’s back is turned: or he draws his sword and rushes upon B without giving him time or opportunity to prepare. In such cases, the combat does not begin upon an equal footing, and undue advantage is taken; and this, more particularly in the last case, where the attack is made with a dangerous weapon. Suppose the contest to be with fists, and one of the combatants has conceal in his possession an open knife and causes death by wounds from this knife. He gains an undue advantage and also acts in a cruel manner. If the combatants begin the fight fairly, but one of them being worsted seizes some deadly weapon which is at hand and uses it and causes death, it seems such conduct excludes him from the benefit of this exception. In such a case, however, it may be that the excitement of passion or fear under which he labours may be deemed to mitigate his offence.

Suppose two persons fight, and one overpowers the other and knocks him down, and then strangles him with a rope. This is a deliberate act, not part of the fight, but a cruel and unusual proceeding, which cannot be extenuated.

All struggles in anger, whether by fighting with or without weapons, by wrestling, or by any other mode, may be offences. But they are offences of very different degrees. In many cases homicide thus caused is so culpable, as to deserve a very severe punishment; but in other cases, a slight or merely nominal punishment may suffice. It will be found that the Courts have it in their power to punish culpable homicide not amounting to murder, with sentences ranging from transportation for life to the infliction of only a small fine.

Exception 5. Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.

Illustration.

A, by instigation, voluntarily causes Z, a person under eighteen years of age, to commit suicide. Here, on account of Z's youth, he was incapable of giving consent to his own death. A has therefore abetted murder.

The case supposed in this illustration, viz. the abetment of suicide committed by a person under eighteen years of age, is one of the offences expressly made punishable by Section 305.

The following case illustrates this Exception. Z a Hindoo widow, consents to be burned with the corpse of her husband. A kindles the pile. Here if Z is above the age of eighteen years, A has committed culpable homicide, not amounting to murder; if Z is under that age, A has committed murder.

We have seen that a person above the age of eighteen may lawfully consent to suffer any harm short of death or grievous hurt (Section 87). According to the present Exception, if such a person consents to his own death, the homicide, though cul-

pable, is mitigated.* The law in these two places has been framed on the principle of regarding the causing of harm as warranted by the sufferer's intelligent consent, and the causing of death as mitigated by the like consent or choice, if the sufferer is a person of ripe age. And the age of eighteen years has been fixed on, as what might reasonably be considered to be a ripe age. The consent must be a free and intelligent consent (see Section 90). But such a consent cannot, for the purpose of bringing a case within this Exception, be given by any person who is not above eighteen years of age. Indeed the mere fact of a person even above that age consenting to be killed, would, except under very unusual circumstances, indicate a morbid state of mind, sufficient to raise a doubt of his sanity.

Suppose the consent of the person whose death is caused, is obtained by deception or concealment, the person practising

* The Indian Law Commissioners in support of the distinction drawn between murder and culpable homicide by consent, observe: "It appears to us that this description of homicide ought to be punished, but that it ought not to be punished so severely as murder. Our reasons for not punishing it so severely as murder are these. In the first place the motives which prompt men to the commission of this offence are generally far more respectable than those which prompt men to the commission of murder. Sometimes it is the effect of a strong sense of religious duty, sometimes of a strong sense of honor, not unfrequently of humanity. The soldier who, at the entreaty of a wounded comrade, puts that comrade out of pain, the friend who supplies laudanum to a person suffering the torment of a lingering disease, the freed man who, in ancient times, held out the sword that his master might fall on it, the high born native of India who stabs the females of his family at their own entreaty in order to save them from the licentiousness of a band of marauders, would, except in Christian societies scarcely be thought culpable and even in Christian societies, would not be regarded by the public, and ought not to be treated by the law as assassins.

"Again, this crime is by no means productive of so much evil to the community as murder. One evil ingredient of the utmost importance is altogether wanting to the offence of culpable homicide by consent. It does not produce general insecurity. It does not spread terror through society. When we punish murder with such signal severity we have two ends in view. One end is that people may not be murdered. Another end is that people may not live in constant dread of being murdered. This second end is perhaps the more important of the two. For if assassination were left unpunished the number of persons assassinated would probably bear a very small proportion to the whole population. But the life of every human being would be passed in constant anxiety and alarm. This property of the offence of murder is not found in the offence of voluntary culpable homicide by consent. Every man who has not given his consent to be put to death is perfectly certain that this latter offence cannot at present be committed on him, and that it never will be committed, unless he shall first be convinced that it is his interest to consent to it."

such deception, cannot avail himself of the consent obtained by such means.

A person labouring under some disease may consent to "take the risk of death" by undergoing a certain treatment of the disease which he knows to be attended by considerable danger to his life. If he consents to such treatment at the hands of one who professes to have the requisite skill and knowledge, but who is in reality grossly ignorant, and who, by his incompetency, causes the death of the sufferer, such consent will not bring the case under this Exception.

And the Exception will perhaps apply to others, as coachmen, pilots, boatmen, engine-drivers, &c., under certain circumstances. Thus a boatman overcrowding his boat, a pilot rashly navigating a vessel, &c., and thereby causing death, will come within the Exception,—if the person whose death was caused by his own will entered the crowded boat, or consented to the pilot's proceeding to sea with the ship in a dangerous state of wind, tide, or weather. In these and similar cases of misconduct and want of skill, consent to the probable risk is not to be implied, unless there is proof of the knowledge of the incapacity or want of skill. The mere employment of such a person is not a consent to suffer whatever his gross ignorance may inflict.

Cases of Suttee must be considered with reference to the terms of this Exception. The burning of a Hindoo widow by her own consent with the corpse of her husband is by existing laws, which were enacted upon the most careful and solemn deliberation, an offence. By Regulation XVII. of 1829 of the Bengal Code, copied exactly in Regulation I. of 1830 of Madras, and followed substantially in Regulation XVI. of 1830 of Bombay, the offence is declared to be "culpable homicide," punishable in the Presidencies of Bengal and Madras by fine, or by imprisonment, or by both fine and imprisonment at the discretion of the Court; and in the same manner, except with a limitation of imprisonment to ten years, in the Presidency of Bombay. Under this Code, those who directly cause the death, are

guilty of this mitigated kind of culpable homicide, if the widow being above eighteen years of age, chooses or consents to die : and those who instigate or aid in the commission of this offence, are in like manner guilty as abettors. (See the Chapter of Abetment.) But if the widow is under that age, all those concerned in the offence are guilty of murder. Whether the victim is a young child, or is of more mature age and intelligence, the consent of such a person, however freely given, does not mitigate the offence if the person is not eighteen years old.

Killing in a duel, according to the circumstances of the particular case, may be culpable homicide amounting to murder, or may be only a mitigated kind of culpable homicide. The Code makes no special provision respecting the way in which fatal duels are to be dealt with. Offences committed in that way are left to be punished under the general law. It will be for the judicial administrators of the law to apply it to the facts of such cases as shall be brought before them, having regard to the classification of cases which the law has adopted, and not to such a consideration as whether a particular case is or is not one of that description of cases called duels, a class unknown to the law.

The offence of causing the death of a woman with child in an endeavour to procure abortion, when the woman consents to take the risk of death, is an offence punishable by a subsequent Section. (See Section 314). A gross disregard for human life is an ingredient in the offence of murder ; but consent, where that is shown, reduces the offence to culpable homicide.

Besides the several kinds of culpable homicide already mentioned, there are other homicides which either are in no degree blameworthy, or are not so culpable as to be properly included among the gradations of the offence of culpable homicide.

These descriptions of homicide will now be mentioned.

1. Homicide when death is caused by pure accident, by an act in itself innocent. This has been already noticed (see page 222).

2. Homicide when death is accidentally caused by a person who does not intend, or know himself to be likely, to cause it, but who causes it while committing an offence.

According to the Code, when a person engaged in the commission of an offence causes death by pure accident, he will suffer only the punishment of his offence, without any additional punishment on account of such accidental death.* If A by

* The Indian Law Commissioners say : " It may be proper for us to offer some arguments in defence of this part of the Code.

" It will be admitted that, when an act is in itself innocent, to punish the person who does it because bad consequences which no human wisdom could have foreseen, have followed from it would be in the highest degree barbarous and absurd.

" A pilot is navigating the Hooghly with the utmost care and skill ; he directs the vessel against a sandbank, which has been recently formed, and of which the existence was altogether unknown till this disaster. Several of his passengers are consequently drowned. To hang the pilot as a murderer, on account of this misfortune, would be universally allowed to be an act of atrocious injustice. But if the voyage of the pilot be itself a high offence, ought that circumstance alone to turn his misfortune into a murder ? Suppose that he is engaged in conveying an offender beyond the reach of justice, that he has kidnapped some natives, and is carrying them to a ship which is to convey them to some foreign slave colony, that he is violating the laws of quarantine, at a time when it is of the highest importance that those laws should be strictly observed, that he is carrying supplies, deserters, and intelligence to the enemies of the State. The offence of such a pilot ought undoubtedly to be severely punished. But to pronounce him guilty of one offence because a misfortune befell him while he was committing another offence, to pronounce him the murderer of people whose lives he never meant to endanger, whom he was doing his best to carry safe to their destination, and whose death has been purely accidental, is surely to confound all the boundaries of crime.

" Again, A heaps fuel on a fire not in an imprudent manner, but in such a manner that the chance of harm is not worth considering. Unhappily, the flame bursts out more violently than there was reason to expect. At the same moment a sudden puff of wind blows Z's light dress towards the hearth. The dress catches fire, and Z is burnt to death. To punish A as a murderer on account of such an unhappy event would be senseless cruelty. But suppose that the fuel which caused the flame to burst forth was a will, which A was fraudulently destroying. Ought this circumstance to make A the murderer of Z ? We think not. For the fraudulent destroying of wills we have provided in other parts of the Code, punishments which we think sufficient. If not sufficient, they ought to be made so. But we cannot admit that Z's death has, in the smallest degree, aggravated A's offence, or ought to be considered in apportioning A's punishment.

" To punish as a murderer every man who, while committing a heinous offence, causes death by pure misadventure, is a course which evidently adds nothing to the security of human life. No man can so conduct himself as to make it absolutely certain that he shall not be so unfortunate as to cause the death of a fellow-creature. The utmost that he can do is to abstain from every thing which is at all likely to cause death. No fear of punishment can make him do more than this : and therefore to punish a man who has done this can add nothing to the security of human life. The only good effect which such punishment can produce will be to deter people from committing any of those offences which turn into murders what are in themselves mere accidents. It is in fact an addition to

shooting at a fowl with intent to kill and steal it, kills B who is behind a bush, A not knowing that he is there ; although A is engaged in the commission of an offence and causes death while so engaged, he is not guilty of culpable homicide, as he did not intend to kill B, or to cause death by doing an act that he knew to be likely to cause death. The rule is the same whether the minor offence is an offence against person or against property, or whatever may be its nature : the intention to commit such minor offence is not allowed in any case by reason of a purely accidental consequence to be deemed equivalent penally to the voluntary causing of death.

3. Homicide when death is caused rashly or negligently by a person, whether he is at the time engaged in the commission of an offence, or is doing an act in itself innocent. Such homicides, like those last mentioned are not "voluntary," for in these also a person causes death which he did not intend to cause or know himself to be likely to cause. A person who does any act so rashly or negligently as to endanger human life is made punishable specifically for this offence by various clauses of the Code (see Chapter XIV. Offences affecting the Public Health,

the punishment of those offences, and it is an addition made in the very worst way. For example, hundreds of persons in some great cities are in the habit of picking pockets. They know that they are guilty of a great offence. But it has never occurred to one of them, nor would it occur to any rational man, that they are guilty of an offence which endangers life. Unhappily one of these hundreds attempts to take the purse of a gentleman who has a loaded pistol in his pocket. The thief touches the trigger: the pistol goes off: the gentleman is shot dead. To treat the case of this pickpocket differently from that of the numerous pickpockets who steal under exactly the same circumstances, with exactly the same intentions, with no less risk of causing death, with no greater care to avoid causing death,—to send them to the house of correction as thieves, and him to the gallows as a murderer,—appears to us an unreasonable course. If the punishment for stealing from the person be too light, let it be increased, and let the increase fall alike on all the offenders. Surely the worst mode of increasing the punishment of an offence is to provide that, besides the ordinary punishment, every offender shall run an exceedingly small risk of being hanged. The more nearly the amount of punishment can be reduced to a certainty the better. But if chance is to be admitted, there are better ways of admitting it. It would be a less capricious, and therefore a more salutary course to provide that every fiftieth or every hundredth thief selected by lot should be hanged, than to provide that every thief should be hanged who, while engaged in stealing should meet with an unforeseen misfortune such as might have befallen the most virtuous man while performing the most virtuous action."

Safety, &c. and Sections 336, 337, 338 of the present Chapter). If his rash or negligent act results in the death of any individual, under such circumstances that he may be said to have caused death without either intending or thinking it likely that he would cause death, he will probably still be punishable only under the clauses above referred to. For the Code appears to contain no provision for the punishment, as a distinct offence, of the *involuntary* causing of death by rashness or negligence. If the act is not merely a rash or negligent act causing death involuntarily, but an act which is, according to Section 300 (clause 4), "so imminently dangerous that it must in all probability cause death, or such bodily injury as is likely to cause death," or if it is an act done voluntarily, the homicide will be, according to its circumstances, murder or one of the lesser kinds of culpable homicide which have been provided for by Sections 299 and 300.

301. If a person, by doing any thing which he intends or knows to be likely to cause death, commits culpable homicide by causing the death of any person whose death he neither intends nor knows himself to be likely to cause, the culpable homicide committed by the offender is of the description of which it would have been if he had caused the death of the person whose death he intended or knew himself to be likely to cause.

Culpable homicide by causing the death of a person other than the person whose death was intended.

The definition of culpable homicide makes the offence to consist in *death caused* by an act done with a certain intention or knowledge. If homicide is the result, it is sufficient, for it is not a part of the definition that the death caused should be the death of the person whose life is aimed at. Whether the offender has succeeded or been thwarted as to the particular victim, he has occasioned a loss of human life, and the State is as much interested in punishing his offence as if he had caused the death of the person he meant to kill. Where a blow aimed at one person lights upon another and kills him,

this, in a loose way of speaking, may be called accidental with regard to the person who is killed by a blow not intended for him ;—but according to law, if it appears that the injury intended to A, be it by poison, blow, or any other means of death, would have amounted to murder, supposing *him* to have been killed by it, it will amount to the same offence if B happens to fall by the same means. On the other hand, if the blow intended against A and lighting on B arose from a sudden transport of passion which, in case A had died by it, would have reduced the offence to culpable homicide not amounting to murder, the fact will admit of the same alleviation if B should happen to fall by it. The culpable homicide actually committed “is of the description of which it would have been” if the blow had caused A’s death.

So where two persons meet to fight a deliberate duel, and a stranger comes to part them and is killed accidentally, so to say, by one of them, this will be a homicide of the same description as if the person killing had caused the death of his adversary in the duel.

302. Whoever commits murder shall be punished
Punishment for murder. with death, or transportation
 for life, and shall also be liable
 to fine.

The Code does not, by its definitions, distinguish between different degrees of murder. But the Courts in awarding the punishment of this offence, may discriminate between a wilful, deliberate, and premeditated killing, as where the murder is committed by poison or by lying in wait, &c., and murder which is committed with less deliberation or premeditation.

303. Whoever, being under sentence of transportation for life, commits murder,
Punishment for murder by a life convict. shall be punished with death.

304. Whoever commits culpable homicide, not
Punishment for culpable homicide not amounting to murder. amounting to murder, shall be
 punished with transportation
 for life, or imprisonment of
 either description for a term which may extend to ten

years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death or of causing such bodily injury as is likely to cause death; or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death or to cause such bodily injury as is likely to cause death.

A great latitude of discretion is given to the judge in apportioning the punishment of culpable homicide when it does not amount to murder; for he is empowered to pass any sentence ranging from transportation for life to a small fine. In general, the Code makes no distinction, either in its definitions or penal provisions, between cases in which a man causes an effect designedly, and cases in which he causes it with a knowledge that he is likely to cause it. But this Section awards a more severe punishment to culpable homicides in which the act causing death is done intentionally for the purpose of causing death, than it does to those homicides in which the act is done with the knowledge that it is likely to cause death, but without intention to cause it.

305. If any person under eighteen years of age, Abetment of suicide of child or insane person. any insane person, any delirious person, any idiot, or any person in a state of intoxication commits suicide, whoever abets the commission of such suicide shall be punished with death or transportation for life, or imprisonment for a term not exceeding ten years, and shall also be liable to fine.

306. If any person commits suicide, whoever abets Abetment of suicide. the commission of such suicide shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

This and the preceding Section contain express provisions for the punishment of abetting suicide when that offence is actually committed. The ordinary law of abetment is inapplicable here. Suicide or self-murder may be the act of a person who is by law incapable of committing an offence (see Sections 82, 83); or it may be committed by a person who is criminally responsible for his actions. In the former case Section 305 makes the abetment of suicide an offence which may be punished as severely as murder.

Upon a charge of abetting suicide, under Section 305, it will be incumbent on the prosecution, in addition to the ordinary evidence of abetment by instigating or aiding &c., to show to the satisfaction of the Court the incapacity, whether it arises from infancy, or insanity, or intoxication of the person who has committed suicide,—in the same manner as the incapacity has to be proved by the accused when, upon an ordinary trial, it is relied on by way of defence. See Section 309 and note.

307. Whoever does any act with such intention or knowledge and under such circumstances that if he by that act caused death he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to transportation for life, or to such punishment as is hereinbefore mentioned.

Illustrations.

(a) A shoots at Z with intention to kill him, under such circumstances that, if death ensued, A would be guilty of murder. A is liable to punishment under this Section.

(b) A, with the intention of causing the death of a child of tender years, exposes it in a desert place. A has committed the offence defined by this Section, though the death of the child does not ensue.

(c) A, intending to murder Z, buys a gun and loads it. A has not yet committed the offence defined in this Section. A fires the gun at Z. He has committed the offence defined in this Section; and if by such firing he wounds Z, he is liable to the punishment provided by the latter part of this Section.

(d) A, intending to murder Z by poison, purchases poison and mixes the same with food which remains in A's keeping ; A has not yet committed the offence in this Section. A places the food on Z's table or delivers it to Z's servants to place it on Z's table. A has committed the offence defined in this Section.

The intention or knowledge which is necessary to constitute murder may exist, combined with an act which falls short of the complete commission of that offence. The murderer may do an act towards the commission of the murder, but may involuntarily fail or be intercepted or prevented from consummating the crime. This and the following Section seem to apply (as the illustrations show) to attempts to murder, in which there has been not merely a commencement of an execution of the purpose, but something little short of a complete execution, the consummation being hindered by circumstances independent of the will of the author. The act or omission, although it does not cause death, is carried to such a length as at the time of carrying it to that length, the offender considers sufficient to cause death.

Whether the act causes hurt or not is material only with reference to the degree of punishment which the Section authorizes. There may be many atrocious and deliberate attempts to murder falling within this provision, which not only cause no hurt, but which are not even trespasses or assaults. A, for example, digs a pit in his garden, and conceals the mouth of it, intending that Z may fall in and perish there. Here, A has committed no trespass, for the ground is his own; and no assault, for he has applied no force to Z. He may not have caused bodily hurt, for Z may have received a timely caution, or may not have gone near the pit. But A's crime is evidently one which ought to be punished as severely as if he had laid hands on Z with the intention of cutting his throat.

But although it is not a necessary part of this offence that hurt should be caused, the act done towards the commission of the murder must be one which approaches closely to the completion of that crime. The Illustrations show this. If A shoots at Z with a gun which he knows is loaded with powder

only, or with a gun which he knows has its touchhole plugged, so that it cannot possibly be fired, or with one which he knows for want of priming will not go off, or if he merely presents, but does not fire, a loaded gun, he does not, it seems, commit an offence under this Section.

If a gun properly loaded is fired into a room in which the person whose death is intended is supposed to be, but in fact that person is at the time in another part of the house where he could not by possibility be reached by the shot : or if a person believing a block of wood to be a man who is his deadly enemy, strikes it a blow intending to murder him :—in such cases, it can hardly be deemed that the mere firing or striking with a guilty intention, the person taking his chance of the consequences, constitutes an offence within this Section.

Attempts to commit grave offences when they fall short of that close approach to a complete execution which is here contemplated, are made punishable by various provisions of the Code, and where there is no express provision and an act is done towards the commission of an offence, the Chapter on Attempts applies if the offence attempted is one punishable by this Code with transportation or imprisonment. (See Chapter XXIII. of Attempts to Commit Offences.)

Mere threats which are in no way carried into action are punishable under Chapter (XXII.) of Criminal Intimidation &c.

308. Whoever does any act with such intention or knowledge and under such circumstances that if he by that act caused death he would be guilty of culpable homicide not amounting to murder, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and if hurt is caused to any person by such act, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Attempt to commit culpable homicide.

Illustrations.

(a) A, on grave and sudden provocation, fires a pistol at Z, under such circumstances that if he thereby caused death he would be guilty of culpable homicide not amounting to murder. A has committed the offence defined in this Section.

See the note to the last preceding Section.

Similar attempts may be made to commit culpable homicide in any of the mitigated forms which prevent that offence from amounting to murder. Here, as in the preceding Section, the attempt must be carried to the point of completion, so far as the criminal is concerned; but the complete effect is frustrated by accident or otherwise.

309. Whoever attempts to commit suicide, and does any act towards the commission of such offence, shall be punished with simple imprisonment for a term which may extend to one year, and shall also be liable to fine.

Attempt to commit suicide.

Any act which is a part execution of the criminal design, is sufficient to constitute abetment under this Section. But the act must be a beginning of the act of self-murder, or such an approach to it as manifestly shows that there is a present intention to commit the crime.

Insane persons and others (see Sections 82—85) whose actions are not imputed to them as offences, cannot of course commit this offence.

With reference to this subject it has been observed that it is very common for native women of all ages to throw themselves into wells on the merest momentary impulse of passion, excited generally by the most trifling causes,—such as an unexpected reprimand, a thwarted wish, the colic, &c.—and that the relatives of such persons are often unjustly harassed by the Police as the alleged instigators of the offence.

Pretended charges against innocent persons founded on circumstances in their domestic history which may be plausibly distorted, and distressing inquiries thereupon into family matters, should be carefully guarded against.

310. Whoever, at any time after the passing of this Act, shall have been habitually associated with any other or others for the purpose of committing robbery or child-stealing by means of or accompanied with murder, is a Thug.

311. Whoever is a Thug shall be punished with transportation for life, and shall also be liable to fine.

Punishment.

Act XXX. of 1836, made it an offence punishable with imprisonment for life with hard labour to have belonged to a gang of Thugs, either within or without the territories of the East India Company.

The first of these two Sections explains what is a Thug. Gangs of persons habitually associated for the purpose of inveigling and murdering travellers or others in order to take their property &c. are so called.

OF THE CAUSING OF MISCARRIAGE, OF INJURIES
TO UNBORN CHILDREN, OF THE EXPOSURE
OF INFANTS, AND OF THE CONCEAL-
MENT OF BIRTHS.

312. Whoever voluntarily causes a woman with child to miscarry shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both ; and if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Causing miscarriage.

Explanation. A woman who causes herself to miscarry is within the meaning of this Section.

Miscarriage is the expulsion of the child or foetus from the mother's womb at any period of pregnancy before the term of

gestation is completed. The offence defined in this Section can only be committed where the woman is in fact pregnant. For although there may be a guilty intention and attempt to commit it on the person of a woman believed to be, but who really is not, pregnant,—the offence, as here defined, seems to require that the woman should be with child.

“Voluntarily causes.” The effect of miscarriage is voluntarily caused, when it is caused by means which are intended, or which are known at the time they are employed to be likely to cause it. (See Section 39.)

“If the woman be quick with child, &c.” Quickening, is the name applied to peculiar sensations experienced by a woman about the fourth or fifth month of pregnancy. The symptoms are popularly ascribed to the first perception of the movements of the foetus. But quickening is not a constant, uniform, and well-marked distinction of the pregnant state.* The phrase “quick with child” is here used probably merely to denote an advanced stage of pregnancy.

Miscarriage caused “in good faith” (see Section 52) for the purpose of saving the life of a woman, is no offence under this Section, whether it be caused with or without the consent of the woman. If her consent is obtained, the act is one which is exempt from all punishment, under the 88th Section.

* It is stated in *Taylor's Medical Jurisprudence* that no evidence but that of the female can satisfactorily establish the fact of quickening; that is, the precise time when it happens. It is said with respect to this sign, that very few women can tell the exact day on which they first feel it; and a large proportion cannot place it within a range of fourteen days. Women who profess to be most exact in noting the period of quickening, differ from each other as to the time. There is much self-deception as to this symptom. The discovery of the movements of a child by an examiner is really a proof that the usual period of quickening is past, but their non-discovery, at the time of examination, is no proof whatever that the woman has not quickened; since the movements are by no means constant, and may be accidentally suspended even at several successive examinations. Besides, cases every now and then occur, in which well formed, healthy females do not experience the sensation of quickening during the whole course of pregnancy; and what is of more importance the movements of the child may be at no time perceptible to the examiner. Females have been known to mistake other sensations for it, and in the end it has been proved that they were not pregnant. If the movements of the child can be felt by the examiner through the abdomen, this is clear evidence, not only of the woman being pregnant, but of her having passed the period of quickening.

The Indian Law Commissioners observe, "With respect to the law on the subject of abortion, we think it necessary to say only that we entertain strong apprehensions that this, or any other law on that subject may, in this country, be abused to the vilest purposes. The charge of abortion is one which, even where it is not substantiated, often leaves a stain on the honor of families. The power of bringing a false accusation of this description is, therefore, a formidable engine in the hands of unprincipled men. This part of the law will, unless great care be taken, produce few convictions, but much misery and terror to respectable families, and a large harvest of profit to the vilest pests of society. We trust that it may be in our power in the Code of Procedure to lay down rules which may prevent such an abuse. Should we not be able to do so, we are inclined to think that it would be our duty to advise his Lordship in Council rather to suffer abortion, where the mother is a party to the offence, to remain wholly unpunished, than to repress it by provisions which would occasion more suffering to the innocent than to the guilty."

According to the explanation a woman who causes herself to miscarry is within this Section. But in awarding punishment, it will not be forgotten that the high caste young widow who, to hide her shame, may at the risk of life cause herself to miscarry, does not, under the circumstances in which she is placed by the institutions of society commit an offence of like criminality with that of the seducer of a young girl or married woman who, to cover her offence, causes such woman to miscarry.

313. Whoever commits the offence defined in the last preceding Section without the consent of the woman, whether the woman is quick with child or not, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

See the note to the last preceding Section.

As to consent, see Sections 90 and 91.

314. Whoever, with intent to cause the miscarriage of a woman with child, Death caused by an act done with intent to cause miscarriage. does any act which causes the death of such woman, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; If act done without woman's consent. and if the act is done without the consent of the woman, shall be punished either with transportation for life, or with the punishment above-mentioned.

Explanation. It is not essential to this offence that the offender should know that the act is likely to cause death.

This species of homicide may be committed involuntarily : that is, in the language of the Code, by a person who does not intend to cause, or think it likely that he will cause, death by the act which he does. If A, intending only to cause miscarriage to Z, involuntarily does an act which causes her death, he is liable to punishment under this Section. And he is thus liable whether he acts with caution in order to prevent risk to Z's life, or whether he acts rashly or negligently. Even if he takes such precautions that there is no reasonable probability that Z's death will be caused, and if the medicine is rendered deadly by some accident which no human sagacity could foresee, or by some peculiarity in Z's constitution, such as there was no ground whatever to expect, A will be liable to punishment under this Section for causing death by an act done with intent to cause miscarriage.

The consent of the woman freely and intelligently given, is allowed to mitigate the offence.

If A kills Z by administering abortives to her with the knowledge that those abortives are likely to cause her death, he is guilty of culpable homicide, which will be culpable homicide by consent, if Z agreed to run the risk,—and murder, if Z did not so agree.

This is an offence which can, it seems, be committed only where the woman is actually pregnant. See note to Section 312.

315. Whoever before the birth of any child does any act with the intention of thereby preventing that child from being born alive, or causing it to die after its birth, and does by such act prevent that child from being born alive, or causes it to die after its birth, shall, if such act be not caused in good faith for the purpose of saving the life of the mother, be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both.

Act done with intent to prevent a child being born alive or to cause it to die after birth.

The causing of the death of a child in the mother's womb and before any part of the child has been brought forth is not homicide. See Section 299, Explanation 3.

This Section punishes offences directed against the life of an unborn child. Any act done with the intention here mentioned, which results in the destruction of the child's life, whether before or after its birth, is made punishable. Suppose a child's life is destroyed by potions, or bruises which it receives in the womb, it is immaterial whether the child is born alive and afterwards dies by reason of them, or whether they cause it to be born dead. The offence is one which will ordinarily be committed where the woman is in an advanced state of pregnancy. But the Section is not expressly confined to causing the death of quick unborn children. The offence of causing miscarriage consists in procuring the expulsion of the child or foetus, by criminal violence or other means, from the mother's womb before the term of gestation is completed. The offence which the present Section punishes is the injury to the child's life—the child may be born in proper time, or if born before due time, the miscarriage may happen by natural causes and not by any criminal means.

Acts done in good faith (see Section 52) to save the mother's life are excepted. Cases of negligent treatment by doctors and others, where due care and attention have not been used,

though not protected by this Exception, are not reached by the words of the Section,—which apply only to acts done with the intention of destroying the child's life.

316. Whoever does any act under such circumstances that if he thereby caused death he would be guilty of culpable homicide, and does by such act cause the death of a quick unborn child, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Causing death of a quick unborn child by an act amounting to culpable homicide.

stances that if he thereby caused death he would be guilty of culpable homicide, and does

Illustration.

A, knowing that he is likely to cause the death of a pregnant woman, does an act, which, if it caused the death of the woman, would amount to culpable homicide. The woman is injured but does not die; but the death of a quick unborn child with which she is pregnant is thereby caused. A is guilty of the offence defined in this Section.

This Section punishes offences against children in the womb where the pregnancy has advanced beyond the stage of quickening (see note to Section 212), and where the death is caused after the quickening and before the birth of the child. Any act or omission of such a nature and done under such circumstances as would amount to the offence of culpable homicide, if the sufferer were a living person, will, if done to a quick unborn child, whose death is caused by it, constitute the offence here punished. If a person strikes a pregnant woman and thereby causes the death of her quick unborn child, he will be guilty of the offence here defined, if the blow was intended by him to cause the woman's death or was one which he knew or had reason to believe to be likely to cause it.

The act done to the woman, if the death of her child is not thereby caused, will probably be punishable as an attempt to commit culpable homicide under the preceding Sections (see Sections 307, 308).

Cases of gross ignorance or neglect or rashness in the treatment of a pregnant woman will be punishable under this

Section, if in their circumstances they would amount to the offence of culpable homicide if the woman's death had been the result.

317. Whoever being the father or mother of a child under the age of twelve years, or having the care of such child, shall expose or leave such child in any place with the intention of wholly abandoning such child, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Exposure and abandonment of a child under twelve years by parent or person having care of it.

Explanation. This Section is not intended to prevent the trial of the offender for murder or culpable homicide, as the case may be, if the child die in consequence of the exposure.

The offence consists in the desertion by the parent, or other person who has undertaken parental duties, of an infant or child of such tender age that it is not able to provide for and to take care of itself. This offence is complete notwithstanding that no actual danger or risk of danger arises to the child's life. Thus, suppose a mother leaves her illegitimate infant child at a hospital or at some place where it is certain the child will be seen and cared for,—she has committed this offence, if she intended to abandon the child. It is true that she has committed the offence under circumstances greatly mitigating it, as compared with a desertion on a barren heath or in an unfrequented place, where the consequence of desertion is great danger or risk of danger to life.

The Explanation shows that a desertion under such circumstances that death is the result of the exposure, may amount to murder or culpable homicide: and though the death of the child may not ensue, the offence may amount to an attempt punishable under Section 307. (See Illustration (b) of that Section.)

“Being the father or mother, &c.” Both are equally bound by ties of duty, and this equally whether the child be born in wedlock or be illegitimate. An infant requiring nurture, or a child of tender years, will ordinarily be in the immediate charge of the mother, the father’s duty being that of providing for both mother and offspring. The person who has the immediate care of the child is the person contemplated. A parent who is absent, but who has provided duly for the maintenance and protection of his child, would not be criminally answerable for its abandonment by the person in whose charge he had left it. The offence consists in the desertion of the child by a person who is bound by nature to support and protect it, or who has taken on himself that duty, whether by adopting the child, or by way of contract with the parent, or in some other way.

“Shall expose or leave, &c.” Exposure or leaving the child with the intention of wholly abandoning it, is an essential part of the offence.

In Bengal, among the lower classes of Mahomedans, it sometimes happens that parents in fulfilment of a vow, take one of their young male children to the Soonderbuns, and there apparently desert him. The place chosen is near some *Durgah* or shrine erected by the Fukirs, to which the child has been dedicated. The intention, it is said, is not that the child should be abandoned,—for the parent continues to remain near at hand,—but that he shall make his way to the neighbouring Fukir, and after remaining for some time, shall choose either to return to his family or to adopt the Fukir’s mode of life. In such cases there is, it seems, no intention to abandon the child, and no exposure or desertion of it within the meaning of this Section.

Again, according to a superstitious usage which prevails in some parts of Eastern Bengal, an infant suffering from convulsions or which refuses sustenance, &c., is put into a basket and swung up to a tree, and to all appearance abandoned. The belief is, that if the child is to be restored at all, it will be restored by the spirit by whom the child is possessed if entirely delivered

over to its mercy. The parents of the child declare that they place the child there in the hope of preserving its life and that they are not neglectful of its wants.

But the plea of good intention is not too readily to be received to palliate acts so imminently dangerous to the lives of helpless children, and a barbarous usage cannot be allowed to supersede the law. In such cases as those just mentioned, however, even if the Court is satisfied that there is an intention wholly to abandon the child, and that the case is brought within this or some other Section of the Code, it will probably deem the accused person sufficiently punished by a light sentence, having regard to the motives which prompt his offence.

Upon the question of intention, the previous treatment, as well as the circumstances of the particular case, will throw light. Thus previous neglect or ill-treatment of the child may add to the probability of the exposure being with intent wholly to abandon it. In a time of famine, a child may be deserted, not because those who have the care of it intend wholly to abandon it, but from mere destitution and inability to support it.

318. Whoever by secretly burying or otherwise disposing of the dead body of a child, whether such child die before or after or during its birth, intentionally conceals or endeavours to conceal the birth of such child, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

The concealment of the birth of a child is not in itself an offence, but only a circumstance of suspicion which may form part of the evidence of an offence. This circumstance the law has thought fit to enact as the definition of a substantive offence. Such enactments are justified by the facility with which the life of an infant at its birth is extinguished, and the temptation to take it away in cases of bastard children.

The prosecutor must first establish, to the satisfaction of the

Court, the fact of the birth of the child. And the secret burying or other disposal of the dead body must then be proved.

Whether the father, mother, or a stranger, does the act, regard must be had to the doer and the person who orders it to be done. Suppose the mother is passive, giving no directions, but another near her directs the burial or other disposal,—it seems she cannot be punished. If there is no act of concealment or disposal of the body after the child is dead, the offence is not committed. A mere denial of its birth is not sufficient.

“Conceals or endeavours to conceal birth, &c.,”—not the fact of pregnancy, or the death, but the birth, *i. e.* the delivery of a child dead or living.

There must be, it seems, a disposal in some secret place, whether the place is intended only as a place of temporary deposit, or as a place of permanent deposit. Merely putting the body in an open exposed position, as on a bed, would not be such a place. But if it be put in a case, or under a bed, pillow, mattress, &c., this will be a sufficient disposal.

Those offences against the human body which amount to murder, or culpable homicide of a mitigated kind, or which are deliberate attempts to commit murder or culpable homicide, have been dealt with in the preceding division of this chapter. There are other offences against the person of a lower degree. In these the bodily injuries inflicted, or intended to be inflicted, fall short of causing death, and of those atrocious attempts to cause death which have been mentioned.

Every one of those offences against the human body which remain to be considered falls under some one or more of the following heads :—Hurt, Restraint, Assault, Kidnapping, Rape, Unnatural Crimes.

OF HURT.

Many of the offences within this division, will also fall under the head of assault. A stab, a blow which fractures a limb,

the flinging of boiling water over a person, are assaults, and are also acts which cause bodily hurt. But bodily hurt may be caused by many acts which are not assaults. A person, for example, who mixes a deleterious potion, and places it on the table of another ; a person who conceals a scythe in the grass on which another is in the habit of walking ; a person who digs a pit in a public path, intending that another may fall into it ;— all these may cause serious hurt, and may be justly punished for causing such hurt. But they cannot, without extreme violence to language, be said to have committed assaults. All bodily hurts, not only those which are serious but also those which are slight, are within the provisions inserted under this division. But a distinction is made between “hurt” and “grievous hurt.” It may not be possible to draw a line between the two, with perfect accuracy. But it is better that some such line should be drawn, though rudely, than that offences, some of which approach in enormity to murder, while others are little more than frolics which a good natured man would hardly resent, should be classed together. The several penal provisions which are here made for these offences, are intended to mark by corresponding degrees of punishment the different degrees of bodily injury caused. Still more they mark the mischievous intentions with which such injuries have been perpetrated. For it is the intention or knowledge with which the hurt is inflicted that must chiefly be regarded in the award of punishment. Where a wicked intention is shown to the satisfaction of the Judge, the severity of the hurt inflicted is not a circumstance which ought to be mainly considered in apportioning the punishment ; though it is undoubtedly a circumstance which is important as evidence when the intention is not clearly established.

319. Whoever causes bodily pain, disease, or
 Hurt. infirmity, to any person, is said
 to cause hurt.

As to the degree of bodily pain, &c. it should be borne in mind on the one hand that harm so slight, that no person of

ordinary sense and temper would complain of it, is by a General Exception excluded (see Section 95): while on the other, severe bodily pain will fall within the definition contained in Section 319, whatever may be the duration of such pain.

320. The following kinds of hurt only are designated as "grievous :"—

Grievous hurt.

First. Emasculation.

Secondly. Permanent privation of the sight of either eye.

Thirdly. Permanent privation of the hearing of either ear.

Fourthly. Privation of any member or joint.

Fifthly. Destruction or permanent impairing of the powers of any member or joint.

Sithly. Permanent disfiguration of the head or face.

Seventhly. Fracture or dislocation of a bone or tooth.

Eighthly. Any hurt which endangers life or which causes the sufferer to be, during the space of twenty days, in severe bodily pain, or unable to follow his ordinary pursuits.

Some hurts which are not, like those kinds of hurts which are mentioned in the first seven clauses, obviously distinguished from slight hurts, may nevertheless be most serious. Thus a wound may cause intense pain, prolonged disease, or lasting injury to the constitution, although it does not fall within any of these clauses. Again a beating which does not maim the sufferer or break his bones, may be so cruel as to bring him to the point of death. It is clear that such hurts should be classed with those which are grievous, and not with hurts, all traces of which disappear in a few days. Accordingly the 8th clause provides for them. Three circumstances are mentioned in the clause, any one of which can make a hurt a grievous hurt of that kind: (1) if life is endangered by it, or (2) if severe bodily pain is caused for twenty days, or (3) if the sufferer is unable to follow his ordinary pursuits for that length of time.

The length of time during which he is in pain or diseased, or incapacitated for pursuing his ordinary avocations, though a defective criterion of the severity of the hurt is the best that can be devised. And it is one which may be employed, not merely in cases where violence has been used, but in cases where hurt has been caused without any assault, as by the administration of drugs, the placing of ropes across a road, &c.

321. Whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said "voluntarily to cause hurt."

Voluntarily causing hurt.

In commenting on the first Section of this Chapter, we have noticed the Explanation, (Section 32) which, except where a contrary intention appears from the context, gives so extended a meaning to the words "does any act," that they include also illegal omissions. In the same place we noticed the guilty intention or knowledge, &c., as essential ingredients in the offence of culpable homicide. They are equally to be regarded in offences coming within the present division of the Chapter.

Both the extent of the hurt and the intention of the offender must be considered. His intention may, in this, as in all other cases, usually be inferred from the act which he has done. It should be observed that the definition now under consideration will include a case in which a person, intending to cause hurt to A, or knowing it to be likely that he will cause such hurt, unintentionally hurts B.

The expressions which are explained in this and the following Sections occur in almost all the subsequent Sections of this division. They designate an act done with the intention to cause or with the knowledge that it is likely to cause hurt, and by which hurt is actually caused.

322. Whoever voluntarily causes hurt, if the hurt which he intends to cause or knows himself to be likely to

Voluntarily causing grievous hurt.

cause is grievous hurt, and if the hurt which he causes is grievous hurt, is said "voluntarily to cause grievous hurt."

Explanation. A person is not said voluntarily to cause grievous hurt except when he both causes grievous hurt, and intends or knows himself to be likely to cause grievous hurt. But he is said voluntarily to cause grievous hurt, if, intending or knowing himself to be likely to cause grievous hurt of one kind, he actually causes grievous hurt of another kind.

Illustration.

A, intending or knowing himself to be likely permanently to disfigure Z's face, gives Z a blow which does not permanently disfigure Z's face, but which causes Z to suffer severe bodily pain for the space of twenty days. A has voluntarily caused grievous hurt.

It is requisite not only that the hurt itself should be grievous, but also that the offender should intend or know himself to be likely to cause a grievous hurt. A man who means only to inflict a slight hurt may, without intending or expecting to do so, cause a hurt which is exceedingly serious. A push which to a man in health is a trifle, may, if it happens to be directed against a diseased part of an infirm person, occasion consequences which the offender never contemplated as possible. A blow designed to inflict only pain for a moment, may cause the person struck to lose his footing, to fall from a considerable height and to break a limb. But it would be unjust to punish the offenders in such cases for results which could not reasonably be expected or intended to follow their acts.

But if grievous hurt of any kind was contemplated, it is immaterial (as the Explanation and Illustration show) whether the hurt caused is the hurt contemplated, provided only it is grievous. The result and the intention must to this extent correspond.

The offender's intention may be reasonably proved from his acts. But how, it may be asked, are we to discover what degree of hurt the offender "knows himself to be likely to cause?" It is not necessary that there should be any hurt of which it could with truth be said, *this and this alone* is the

degree of hurt which the offender knew himself to be likely to cause. A person who ties a rope across a road by night, may know himself to be likely to cause grievous hurt, even though he thinks it on the whole more probable that he will only cause hurt not grievous. He may contemplate both at the same time. The duty of the judge in such a case will be, not to seek for direct proof of the precise degree of hurt which the offender thought himself likely to cause, but to draw a conclusion from the nature of the act and the evidence generally as to whether, among other consequences, grievous hurt might not reasonably have been thought likely to ensue from it. If the fair conclusion at which he arrives is that nothing more than simple hurt was probably to be anticipated, then although grievous hurt may unexpectedly have ensued, it will be his duty to convict the offender of causing simple hurt only.

In the definitions of "hurt" and "grievous hurt," and in many other definitions throughout the Code, the lower offence "hurt" is so defined as to include all cases which fall within the definition of the cognate higher offence "grievous hurt." One and the same thing may therefore here, and elsewhere throughout the Code, be an offence under more than one penal clause. The advantage of making the definition of the lower of two closely related offences include cases in which the higher is committed is, that, if the evidence leaves it doubtful whether, *ex. gr.*, "hurt" or "grievous hurt" has been committed, there may be a conviction for the lower offence.

323. Whoever, except in the case provided for by
Punishment for voluntarily causing hurt. Section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand Rupees, or with both.

This is the ordinary punishment, for the infliction of simple bodily hurt : but there are, as will be seen, certain aggravating and mitigating circumstances which make a considerable differ-

ence in the character of the offence. The excepted Section 334 relates to hurt caused on provocation.

324. Whoever, except in the case provided for by Section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing, or cutting, or any instrument, which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or both.

The means used to inflict the hurt indicate great malignity. A blow with the fist may give as much pain and cause as lasting injury as cutting with a knife or branding with a hot iron. But in most cases, the offender who has used a knife or a hot iron is a far worse and more dangerous member of society than he who has only used his fist. The hurt actually inflicted may not, according to the classification of hurts, be a grievous hurt. Yet, on account of the mode in which it is inflicted, it deserves to be punished more severely than many grievous hurts.

The administering deleterious or stupefying drugs with the view to commit an offence is made punishable by a subsequent Section (see Section 328). The mere administering any such deleterious thing, where the object or intention is not apparent, may be an offence within this Section.

325. Whoever, except in the case provided by Section 335, voluntarily causes grievous hurt, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

326. Whoever, except in the case provided by Section 335, voluntarily causes **Voluntarily causing grievous hurt by dangerous weapons or means.** grievous hurt, by means of any instrument for shooting, stabbing, or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Sections 325 and 326 like the two Sections immediately preceding, provide the ordinary punishment, and the punishment under certain aggravating circumstances, of the offences mentioned—the two later Sections applying to the case of causing “grievous hurt,” and the two others to the case of “hurt.”

Many acts made punishable under the preceding provisions may approach closely in character to those deliberate attempts to commit culpable homicide which are punished by Sections 307 and 308. Such attempts, when hurt is caused by them, are distinguishable from the offences here punished,—because in the former the act done is intended or known to be likely to cause death; whereas nothing more than hurt or grievous hurt is contemplated in cases falling under the present Sections. But it may happen that the same act and the same circumstances which satisfy the Court that hurt or grievous hurt has been voluntarily caused, are equally cogent to show that the intention of the accused was to cause death.

It is remarkable that there is no express provision under this head “of hurt,” for cases in which hurt is inflicted in an attempt to murder or to commit culpable homicide. Such cases may, it seems, be punished either under the penal clauses which have been referred to (Sections 307, 308); or, if they are not thought

fit for prosecution as offences within those clauses, then under the Sections contained in the present division.

327. Whoever voluntarily causes hurt for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any property or valuable security, or of constraining the sufferer or any person interested in such sufferer to do anything which is illegal or which may facilitate the commission of an offence, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

The bodily hurt is inflicted by way of torture. The execrable cruelties which are committed in India by robbers, dacoits, &c. for the purpose of extorting property, or information relating to property, render a severe punishment necessary.

The Section applies not only to such cases, but to all cases in which the hurt is for the purpose of extorting, or compelling against the sufferer's consent, the delivery of property, notwithstanding that the offender may have a valid claim or title to such property.

“ Person interested in the sufferer.” Any tie of blood relationship, marriage, service, or even friendship, seems sufficient. The Court must ascertain for what purpose the suffering was caused, whether it was directed wholly at the sufferer or at another through him. Besides the purposes above referred to, of extorting property or information relating to property, another purpose may be to constrain to any illegal act. The words “ offence ” and “ illegal ” are explained (see Sections 40, 43.)

328. Whoever administers to or causes to be taken by any person any poison or any stupefying, intoxicating, or unwholesome drug, or other thing, with intent to cause hurt to such person, or with intent to commit or to facilitate the commission of an offence, or knowing it

to be likely that he will thereby cause hurt, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

This offence is complete although no hurt is caused to the person to whom the poison or drug is administered. It is sufficient if he is induced to take it by a person who has any such intention as is specified in the Section, or who knows that it is likely to cause hurt.

A person who knowingly causes another to take poison, may be presumed, without further proof, to intend to cause hurt, unless he is able to show satisfactorily a good intention *e. g.* that it was administered in good faith medicinally. Stupefying, intoxicating, or unwholesome drugs or liquors may often be given and taken by those who know their qualities, or who have no intention to cause hurt or to commit an offence by means of them. Where such things are administered, the criminal intention, which is an essential portion of the offence here defined, should be made to appear to the satisfaction of the Court.

The sale of intoxicating or unwholesome liquors or drugs by persons who know their qualities, and that they are likely to cause hurt, is not, it seems, an offence falling under this Section. Such offences are elsewhere made punishable. (See Sections 272—276.)

329. Whoever voluntarily causes grievous hurt for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any property or valuable security, or of constraining the sufferer or any person interested in such sufferer to do anything that is illegal or which may facilitate the commission of an offence, shall be punished with transportation for life or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Voluntarily causing grievous hurt to extort property or to constrain to an illegal act.

See the note to Section 327.

Grievous hurt under the like aggravated circumstances is here made punishable.

330. Whoever voluntarily causes hurt, for the purpose of extorting from the sufferer, or any person interested in the sufferer, any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore or to cause the restoration of any property or valuable security or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Illustrations.

(a) A, a police officer, tortures Z in order to induce Z to confess that he committed a crime. A is guilty of an offence under this Section.

(b) A, a police officer, tortures B to induce him to point out where certain stolen property is deposited. A is guilty of an offence under this Section.

(c) A, a Revenue officer, tortures Z in order to compel him to pay certain arrears of Revenue due from Z. A is guilty of an offence under this Section.

(d) A, a zemindar, tortures a ryot in order to compel him to pay his rent. A is guilty of an offence under this Section.

331. Whoever voluntarily causes grievous hurt for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore or to cause the restoration of any property or valuable security, or to satisfy any claim or demand or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either

description for a term which may extend to ten years, and shall also be liable to fine.

The hurt or grievous hurt in these Sections is supposed to be committed by way of torture, but for purposes differing from those mentioned in the two preceding Sections. The illustrations show the operation of these provisions. The information sought for may be required for the advancement of justice—nay more, it may be such information as cannot be withheld without offending against public justice—the property, the extortion of which is sought, may be property which the sufferer has borrowed from the offender, and which he illegally refuses to give back—the claim or demand may be a just claim—but the law will not tolerate the employment of such means as are here made punishable, even when used for honest ends.

332. Whoever voluntarily causes hurt to any per-

son being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

333. Whoever voluntarily causes grievous hurt to

any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of any thing done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for

a term which may extend to ten years, and shall also be liable to fine.

The hurt or grievous hurt is to a public servant in the lawful discharge of his duty, or in order to deter him from it, or in consequence of it.

Such public servants as officers of justice, while in the execution of their offices, are under the peculiar protection of the law. Without this special protection, the public tranquillity cannot be maintained or private property secured; nor in the ordinary course of things can offenders be made amenable to justice. This protection is not confined to the moment during which the public servant is upon the spot and at the scene of action engaged in the business which brought him thither. He is under the same protection of the law while proceeding to the place, while remaining there, and while returning from it.

The protection which the law thus affords to these public servants is not, it seems, confined to them, but extends to persons acting in good faith by their directions.

But when public servants step beyond the limits of the law, they wholly forfeit the protection and privilege which it confers on them. Nevertheless while they act in good faith they are to some extent protected (see Sections 78, 79); and for their security the right of private defence is within certain prescribed limits taken away when a public servant acts in good faith under colour of his office, though his act may not be strictly justifiable by law (Section 99).

See also, as to obstructing &c. public servants, Sections 152, 186 and 353.

334. Whoever voluntarily causes hurt on grave
Voluntarily causing hurt on and sudden provocation, if he
provocation. neither intends nor knows him-
 self to be likely to cause hurt to any person other
 than the person who gave the provocation, shall be
 punished with imprisonment of either description for
 a term which may extend to one month, or with fine

which may extend to five hundred Rupees, or with both.

335. Whoever ^{voluntarily} causes grievous hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause grievous hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to four years, or with fine which may extend to two thousand Rupees, or with both.

Explanation. The last two Sections are subject to the same provisos as Exception 1, Section 300.

The punishment is mitigated because the hurt is caused on grave and sudden provocation. Causing grievous hurt on grave and sudden provocation is punishable more severely than causing hurt not grievous on such provocation. The provisions on this subject are framed on the same principles on which the corresponding portion of the law of Culpable Homicide has been framed.

In Section 335, the word "voluntarily" seems to have been inadvertently omitted.

Hitherto cases in which hurt has been voluntarily caused have been provided for. But hurt may be caused involuntarily yet culpably. There may have been no design to cause hurt, no expectation that hurt would be caused. Yet there may have been a want of due care not to cause hurt. For these cases of the involuntary, yet culpable, infliction of bodily hurt, and also for the like cases of causing risk of hurt, the following Sections are provided.

336. Whoever does any act so rashly or negligently as to endanger human life or the personal safety of others, shall be punished with imprisonment of either description for a term which may

Punishment for act which endangers life or the personal safety of others.

extend to three months, or with fine which may extend to two hundred and fifty Rupees, or with both.

Many specific acts of rashness or negligence likely to endanger life or to cause hurt or injury, are made punishable by a previous chapter (Chapter XIV).

This Section punishes similar acts, of whatever kind, which cause risk to human life or to the personal safety of others, although no hurt may have been caused thereby.

337. Whoever causes hurt to any person by doing any act so rashly or negligently as to endanger human life or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five hundred Rupees, or with both.

338. Whoever causes grievous hurt to any person by doing any act so rashly or negligently as to endanger human life or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine which may extend to one thousand Rupees, or with both.

See the note to Section 336.

In these Sections an enhanced punishment is given, if the rash or negligent act causes hurt of any description.

The offence made punishable by these three Sections is the doing of an act so rashly or negligently as to put in peril the lives and safety of others ; but without any intention of causing hurt or any knowledge that hurt is likely to be thereby caused.

OF WRONGFUL RESTRAINT, &C.

The provisions under this head are for the punishment of offences, in which the offender, although he may have no design

against human life, and no intention to inflict bodily hurt, either wholly deprives the injured person of his freedom, or in some degree abridges his personal liberty. The personal restraint or confinement may, in some cases, be so slight as to deserve little more than a nominal punishment; but the arbitrary imprisonment of a person, which is often a quiet and convenient mode of persecuting him, is a most serious offence, deserving of exemplary punishment.

339. Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person.

Exception. The obstruction of a private way over land or water which a person in good faith believes himself to have a lawful right to obstruct, is not an offence within the meaning of this Section.

Illustration.

A obstructs a path along which Z has a right to pass, A not believing in good faith that he has a right to stop the path. Z is thereby prevented from passing. A wrongfully restrains Z.

An obstruction made by a person who acts in good faith in the supposed exercise of any right is not an offence. And it is not apparent why the exception appended to the definition, is confined to the case of obstructing a private way.

The obstruction must be voluntary: that is, the act or the illegal omission which causes it must be intended or known to be likely to obstruct. If there is this intention or knowledge, it is not necessary that there should be actual obstruction by physical means, by some act done, &c.

A person may obstruct another by causing it to appear to that other impossible, difficult, or dangerous to proceed, as well as by causing it actually to be impossible, difficult or dangerous for that other to proceed.

The following cases, taken from the Code as originally framed, illustrate this Section.

A illegally omits to take proper order with a furious buffalo which is in his possession (see Section 289), and thus voluntarily deters Z from passing along a road along which Z has a right to pass. A wrongfully restrains Z.

A threatens to set a savage dog at Z, if Z goes along a path along which Z has a right to go, Z is thus prevented from going along that path. A wrongfully restrains Z.

In the last illustration, if the dog is not really savage but if A voluntarily causes Z to think that it is savage, and thereby prevents Z from going along the path,—A wrongfully restrains Z.

340. Whoever wrongfully restrains any person in such a manner as to prevent that person from proceeding beyond certain circumscribing limits, is said “wrongfully to confine” that person.

Wrongful confinement.

Illustrations.

(a) A causes Z to go within a walled space, and locks Z in. Z is thus prevented from proceeding in any direction beyond the circumscribing line of wall. A wrongfully confines Z.

(b) A places men with fire-arms at the outlets of a building and tells Z that they will fire at Z, if Z attempts to leave the building. A wrongfully confines Z.

In illustration (a) if there is in some nook of the walled space a door which is not secured, but which may easily escape observation,—as A had voluntarily caused it to appear to Z impossible to proceed beyond the line of wall, A has wrongfully confined Z.

341. Whoever wrongfully restrains any person shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred Rupees, or with both.

Punishment for wrongful restraint.

The offence of wrongful restraint, which consists in the keeping a man out of a place where he wishes to be and has a right to be, when it does not amount to wrongful confine-

ment and when it is not accompanied with violence or with the causing of bodily hurt, is seldom a serious offence. It is therefore visited with a light punishment.

342. Whoever wrongfully confines any person shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand Rupees, or with both.

Punishment for wrongful confinement.

This Section punishes the offence defined by Section 340. Wrongful confinement, which is a form of wrongful restraint, is the keeping a man within limits out of which he wishes to go, and has a right to go. It may, like wrongful restraint, be a slight offence. But when attended by aggravating circumstances it may be one of the most serious that can be committed.

343. Whoever wrongfully confines any person for three days or more, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Wrongful confinement for three or more days.

One aggravating circumstance in this offence of wrongful confinement is the duration of the confinement. Confinement for a quarter of an hour may possibly be a mere frolic, deserving only a nominal punishment. It may indeed be so harmless as not to amount to an offence (see Section 95). But the like confinement if continued for a length of time may come to be a very serious offence.

“For three days or more.” See the next Section : the words, “less than ten” are not to be understood here. In this as in many other instances the definition of the lower offence is made to include the cases which fall within the definition of the cognate higher offence.

344. Whoever wrongfully confines any person for ten days or more, shall be punished with imprisonment

Wrongful confinement for ten or more days.

of either description for a term which may extend to three years, and shall also be liable to fine.

345. Whoever keeps any person in wrongful confinement, knowing that a writ for the liberation of that person has been duly issued, shall be punished with imprisonment of either description for a term which may extend to two years in addition to any term of imprisonment to which he may be liable under any other Section of this Chapter.

This is another circumstance of aggravation. The offender persists in wrongfully confining a person notwithstanding an order issued by a competent authority for the liberation, or for the production, of such person.

Jailers and other public servants would appear to be punishable for disobedience to a writ under such provisions as those contained in Sections 166 and 220, as well as under this Section.

In the Supreme Courts the writ of Habeas Corpus, requires a return of the body of a person who is confined, and the cause of his detention, in order that he may be set free if he is unlawfully detained. In other Courts the writ of liberation which the Section mentions, must be duly issued according to the manner which may be prescribed by the Criminal Code of Procedure, or such other law as may hereafter be enacted on this subject.

346. Whoever wrongfully confines any person in such manner as to indicate an intention that the confinement of such person may not be known to any person interested in the person so confined, or to any public servant, or that the place of such confinement may not be known to or discovered by any such person or public servant as hereinbefore mentioned, shall be punished with imprisonment of either description for a term which may extend to two years in addition to any other punishment to which he may be liable for such wrongful confinement.

The offence consists in wrongful confinement, aggravated by the offender's endeavour to deprive his prisoner and those interested in him or bound to protect him, of the remedies which the law gives against this wrong.

This intention of the offender is not expressly made part of the definition. But the words "in such a manner as to *indicate an intention that*" &c., should perhaps be understood to make this intention a part of the defined offence.

347. Whoever wrongfully confines any person for the purpose of extorting from the person confined, or from any person interested in the person confined, any property or valuable security, or of constraining the person confined or any person interested in such person to do any thing illegal or to give any information which may facilitate the commission of an offence, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Wrongful confinement for the purpose of extorting property or constraining to an illegal act.

See the note to Section 327.

348. Whoever wrongfully confines any person for the purpose of extorting from the person confined or any person interested in the person confined, any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the person confined or any person interested in the person confined to restore or to cause the restoration of any property or valuable security or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Wrongful confinement for the purpose of extorting confession or of compelling restoration of property.

See the note to Sections 330, 331.

A large proportion of the acts designated as assaults, will also be offences falling under the heads of hurt and restraint. Thus, a stab with a knife is an offence falling under the head of hurt, and it is also an assault. The seizing a man by the collar, and thus preventing him from proceeding on his way, is unlawful restraint, and is also an assault. But there will be many assaults, which it is absolutely necessary to punish, yet which cause neither bodily hurt nor unlawful restraint. A man who impertinently puts his arm round a lady's waist, who aims a severe stroke at a person with a horsewhip, who maliciously throws a stone at a person, squirts dirty water over him, or sets a dog at him, may cause no hurt and no restraint,—yet it is evident that such acts ought to be prevented.

The elaborate explanations given, in the first three Sections, of the words "to use force," "to use criminal force," and to commit "an assault" should be carefully read. And the Illustrations will render every part of these explanations intelligible to an attentive reader.

In defining criminal force and assault, it has been thought necessary to explain what is meant by the words "to use force."* Then follows the definition of the two offences just mentioned, which appear to correspond to the offences known to the English law respectively, as assault, and as assault and battery.

349. A person is said to use force to another if he causes motion, change of motion, or cessation of motion

* It is to the elaborate explanation given of these words that the framers of the Code appear specially to refer when, speaking of the definition of the offence which is here called "criminal force," but which in the original Code was called "assault" they say—"We have found great difficulty in giving a definition, and are by no means satisfied with that which we now offer. As, however, it at present appears to us to include all that we mean to include, and to exclude all that we mean to exclude, we have adopted it in spite of the objections which we feel to its harsh and quaint phraseology. We have adopted it with the less scruple, because we trust that the illustrations will render every part of it intelligible to an attentive reader."

to that other, or if he causes to any substance such motion, or change of motion, or cessation of motion as brings that substance into contact with any part of that other's body, or with anything which that other is wearing or carrying, or with anything so situated that such contact affects that other's sense of feeling; provided that the person causing the motion, or change of motion, or cessation of motion, causes that motion, change of motion, or cessation of motion in one of the three ways hereinafter described:

First.—By his own bodily power.

Secondly.—By disposing any substance in such a manner that the motion or change or cessation of motion takes place without any further act on his part, or on the part of any other person.

Thirdly.—By inducing any animal to move, to change its motion, or to cease to move.

350. Whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear, or annoyance to the person to whom the force is used, is said to "use criminal force" to that other.

Illustrations.

(a) Z is sitting in a moored boat on a river. A unfastens the moorings, and thus intentionally causes the boat to drift down the stream. Here A intentionally causes motion to Z, and he does this by disposing substances in such a manner that the motion is produced without any other act on any person's part. A has therefore intentionally used force to Z; and if he has done so without Z's consent, in order to the committing of any offence, or intending or knowing it to be likely that this use of force will cause injury, fear, or annoyance to Z, A has used criminal force to Z.

(b) Z is riding in a chariot. A lashes Z's horses, and thereby causes them to quicken their pace. Here A has caused change of motion to Z by inducing animals to change their motion. A has therefore used force to Z; and if A has done this without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten, or annoy Z, A has used criminal force to Z.

(c) Z is riding in a palanquin. A, intending to rob Z, seizes the pole, and stops the palanquin. Here A has caused cessation of mo-

tion to Z, and he has done this by his own bodily power. A has therefore used force to Z; and as A has acted thus intentionally, without Z's consent, in order to the commission of an offence, A has used criminal force to Z.

(d) A intentionally pushes against Z in the street. Here A has by his own bodily power moved his own person so as to bring it into contact with Z: he has therefore intentionally used force to Z; and if he has done so without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten, or annoy Z, he has used criminal force to Z.

(e) A throws a stone intending or knowing it to be likely that the stone will be thus brought into contact with Z, or with Z's clothes, or with something carried by Z, or that it will strike water and dash up the water against Z's clothes, or something carried by Z. Here, if the throwing of the stone produce the effect of causing any substance to come into contact with Z or Z's clothes, A has used force to Z; and if he did so without Z's consent, intending thereby to injure, frighten, or annoy Z, he has used criminal force to Z.

(f) A intentionally pulls up a woman's veil. Here A intentionally uses force to her; and if he does so without her consent, intending or knowing it be likely that he may thereby injure, frighten, or annoy her, he has used criminal force to her.

(g) Z is bathing. A pours into the bath water which he knows to be boiling. Here A intentionally by his own bodily power causes such motion in the boiling water as brings that water into contact with Z, or with other water so situated that such contact must affect Z's sense of feeling: A has therefore intentionally used force to Z; and if he has done this without Z's consent, intending or knowing it to be likely that he may thereby cause injury, fear, or annoyance to Z, A has used criminal force.

(h) A incites a dog to spring upon Z without Z's consent. Here, if A intends to cause injury, fear, or annoyance to Z, he uses criminal force to Z.

This definition of criminal force appears to include what is termed by the English law "battery," that is, any, even the least, hurt or violence inflicted on the person of another.

If there is the use of force as defined in the preceding Section, and this is intentional on his part who uses it, and is also without the consent of the person against whom it is used, such use of force becomes criminal, when it has for its object the commission of an offence (see Section 40), the causing of injury (see Section 44), or the causing of fear or annoyance.

It will be observed that the definition of the offence does not include anything that the doer does by means of another person.

351. Whoever makes any gesture, or any preparation, intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person is said to commit "an assault."

Assault.

Explanation. Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparations such a meaning as may make those gestures or preparations amount to an assault.

Illustrations.

(a) A shakes his fist at Z, intending or knowing it to be likely that he may thereby cause Z to believe that A is about to strike Z. A has committed an assault.

(b) A begins to unloose the muzzle of a ferocious dog, intending or knowing it to be likely that he may thereby cause Z to believe that he is about to cause the dog to attack Z. A has committed an assault upon Z.

(c) A takes up a stick, saying to Z, "I will give you a beating." Here, though the words used by A could in no case amount to an assault, and though the mere gesture unaccompanied by any other circumstances, might not amount to an assault, the gesture explained by the words may amount to an assault.

An assault is something less than the use of criminal force, the force being cut short before the blow actually falls. It seems to consist in an attempt or offer by a person having present ability with force to do any hurt or violence to the person of another. And it is committed whenever a well-founded apprehension of immediate peril from a force already partially or fully put in motion is created. An assault is included in every use of criminal force.

Mere words, it is explained, do not amount to an assault. Such acts as the following,—a blow which is purely accidental, an injury received in playing at any lawful sport by consent, reasonable chastisement of a child by his parent or guardian, or of a scholar by his schoolmaster, a blow or other violence in self-defence, the use of force by a public servant with-

in the sphere of his duty, force used in defence of a man's property, and the like,—are not offences, either under the head of criminal force or assault, or under any other provision of the Code. By the Chapter of General Exceptions, such acts are saved from being accounted offences.

352. Whoever assaults or uses criminal force to any person otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred Rupees, or with both.

Punishment for using criminal force otherwise than on grave provocation.

Explanation — Grave and sudden provocation will not mitigate the punishment for an offence under this section if the provocation is sought or voluntarily provoked by the offender as an excuse for the offence; or

If the provocation is given by any thing done in obedience to the law or by a public servant in the lawful exercise of the powers of such public servant; or

If the provocation is given by any thing done in the lawful exercise of the right of private defence.

Whether the provocation was grave and sudden enough to mitigate the offence, is a question of fact.

This Section provides the ordinary punishment for an assault, or for using criminal force. A mitigation of punishment when there is grave and sudden provocation, is admitted here as in cases of culpable homicide and of hurt. The several General Exceptions concerning the right of private defence, acts done by consent, &c., should be borne in mind.

353. Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of any thing done or attempted to be done by such

Using criminal force to deter a public servant from discharge of his duty.

person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

The assault is aggravated because a public servant is the object of it. See the note to Section 332. To support a charge under this Section,—besides proof of the assault or use of criminal force, and that it was used against one who either was or was acting as a public servant (see Section 21,)—it should be shown that the accused had knowledge of the official character of the person assaulted. It will of course be open to the accused to show illegality or excess on the part of the public servant.

354. Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Assault or use of criminal force to a woman with intent to outrage her modesty.

“Woman” is explained to denote a female human being of any age. (See Section 10.) An assault or use of criminal force, when it is committed with the intention to outrage female modesty, or with the knowledge that it is likely to have that result, is severely punished.

The phrase “to outrage modesty” is indefinite ; and it would be an outrage to the modesty of one woman to do to her what would be thought nothing of by another. The taking indecent liberties with females will be punished by this Section : but the provision is not confined to such cases. In a country, where many women consider themselves as dishonoured by exposure to the gaze of strangers, many gross insults of a different kind, such as a man rudely thrusting his head into the covered palanquin of a woman of rank, may well be deemed to outrage female modesty. There is a sufficient discretion allowed in awarding punishment (which may extend to two years or may be only a nominal fine), to admit of a due regard being paid to a variety of conditions

and circumstances, making the same act less offensive to one person than to another.

Assaults committed with the intention to commit rape are not, it seems, here contemplated.

Mere words or gestures of insult offered to a woman are made punishable by Section 509.

355. Whoever assaults or uses criminal force to any person, intending thereby to dishonor that person, otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Assault or criminal force with intent to dishonor a person, otherwise than on grave provocation.

The intention to dishonor may be supposed to exist when the assault or criminal force is by means grossly insulting, such as kicking a man, pulling a man's nose, or laying a whip across the shoulders.

356. Whoever assaults or uses criminal force to any person, in attempting to commit theft on any property which that person is then wearing or carrying, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Assault or criminal force in attempt to commit theft of property carried by a person.

The aggravation consists in the attempt to commit theft on property which is in personal use or under personal protection. Attempts to pick pockets or to commit theft from the person, when the offence is not completed, and even when the offence could not be completed (as where the pocket contains nothing), will be punishable under this Section, if the thief in his attempt does any thing which amounts to an assault or use of criminal force.

Assault or the use of criminal force in attempting murder, are not made punishable under this division or elsewhere specifically. Nor are they made punishable when committed in attempts

to commit such grave offences against the person as kidnapping, causing grievous hurt, or rape. If the assault or criminal force is shown satisfactorily to have been in part execution of a design to commit any of the offences abovementioned, it will, it seems, be punishable as an attempt to commit such offence; and if the criminal force is carried to such a length as the offender contemplates as sufficient to cause death, it falls within Sections 307 and 308, as an attempt to commit murder or culpable homicide.

357. Whoever assaults or uses criminal force to
Assault or criminal force in attempt wrongfully to confine any person. any person, in attempting wrongfully to confine that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand Rupees, or with both.

358. Whoever assaults or uses criminal force to
Assaulting or using criminal force on grave provocation. any person on grave and sudden provocation given by that person, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred Rupees, or with both.

Explanation. The last Section is subject to the same explanation as Section 352.

OF KIDNAPPING, ABDUCTION, &c.

The former divisions of this Chapter of Offences against the Human Body have gradually led to the present. Pain or hurt of body is not necessarily a part of the offences comprised under this head. And some of these offences may be committed without any such abridgement of personal liberty as amounts to wrongful restraint or confinement.

359. Kidnapping is of two kinds: kidnapping
Kidnapping. from British India, and kidnapping from lawful guardianship.

360. Whoever conveys any person beyond the limits of British India without the consent of that person, or of some person legally authorized to consent on behalf of that person, is said to kidnap that person from British India.

The offence of kidnapping from British India consists, according to this definition, in conveying any person out of the protection of the law without his consent, or the consent of some person legally authorized to consent on his behalf; or with such consent, when it is not freely and intelligently given, but is obtained by deception or under any of those circumstances which have been explained (see Section 90) to invalidate a consent.

This offence is sometimes committed by means of assault, and is sometimes attended with restraint. But this will not always be the case. For example, a labourer who has been induced to embark on board of a ship by false assurances that he shall be taken to a country where he shall have good wages, but whom the Captain of the ship intends to sell for a slave, or otherwise illegally to dispose of, may be conveyed beyond the limits of British India and so kidnapped without being either assaulted or restrained.

This offence may be committed on a child, or on a grown man or woman. The carrying of a grown up person by force from one place in British India to another, and the enslaving him within the British Territories, are offences sufficiently provided for under the heads of restraint and confinement.

The enticing a grown-up person by false promises to go from one place in British India to another place also within British India may be a subject for a civil action and under certain circumstances for a criminal prosecution. But it does not come under the head of kidnapping. This offence can only be committed on a grown man by conveying him beyond the limits of the British Territories in India.

The words "British India" in this Code have been explained to mean the British Indian Territories except the Straits' Settlement (see Section 15).

361. Whoever takes or entices any minor under Kidnapping from lawful guardianship. fourteen years of age if a male, or under sixteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.

Explanation. The words "lawful guardian" in this Section include any person lawfully entrusted with the care or custody of such minor or other person.

Exception. This Section does not extend to the act of any person who, in good faith, believes himself to be the father of an illegitimate child, or who in good faith believes himself to be entitled to the lawful custody of such child, unless such act is committed for an immoral or unlawful purpose.

This offence consists in taking a minor, or a person of unsound mind, out of the keeping of his lawful guardian, without the consent of such guardian. This mode of kidnapping, like that defined in the last preceding Section, may be committed without assault or the use of criminal force, and without being attended with any restraint. A child, for example, who is decoyed from its guardians, who soon forgets its home, and who consents to remain with the kidnapper, cannot be said to have been assaulted or restrained, but it is none the less kidnapped.

The consent of the kidnapped person is immaterial, and it is not necessary that the taking or enticing should be shown to be by means of force or fraud.

The offence here defined is made punishable, in order to protect parents and others having the lawful charge or custody of minors or insane persons.

"Takes or entices out of the keeping &c." There must, it

seems, be a taking of the child out of the possession of the parent. If the child continues a member of the family and under the parental control, there is a sufficient keeping or possession ; and so if a child leaves its parents' house for a particular purpose with their consent, it cannot be said to be out of the parents' keeping. An adopted child would after adoption be deemed to be in the keeping of its adopted, and not of its natural, parents.

The taking charge of a child who has strayed from home, or has been lost and left behind at a fair, or who is an orphan,—when this is done from motives of humanity and without an intention to detain the child from its lawful guardians, if it should have any,—is of course not a taking such as is contemplated by this Section.

362. Whoever by force compels, or by any deceitful means induces, any person
Abduction. to go from any place, is said to abduct that person.

This Section does not define an offence. It is merely a definition of the word “abduction,” which occurs in some of the penal provisions which follow.

Abduction differs from kidnapping, because there may be abduction without a removal of the person from the protection of the law, or even from lawful guardianship.

It may be observed of the things which constitute abduction according to this definition, that to compel by force a person to go from any place is not an offence *specifically* under this Code, although it may necessarily involve the commission of an offence, as assault at least, and probably wrongful restraint. To induce a person by deceitful means to go from any place is ordinarily not an offence, but only a subject for a civil action. Neither of these things are specifically punished as offences here ; they merely constitute the definition of abduction. And abduction is made *an offence* only when it is committed with certain aggravating circumstances.

Suppose a crimp compels by force,—or induces by deception, or concealment, as to their place of destination, their future treatment, &c.,—a number of coolies to leave their homes for some port of embarkation in British India: or suppose a friendless and deserted child is taken and detained by a stranger with some evil intention:—whatever circumstances of aggravation might attend either of these cases, the definition of kidnapping would not include them.

363. Whoever kidnaps any person from British India or from lawful guardianship, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

364. Whoever kidnaps or abducts any person in order that such person may be murdered, or may be so disposed of as to be put in danger of being murdered, shall be punished with transportation for life or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Illustrations.

(a) A kidnaps Z from British India, intending or knowing it to be likely that Z may be sacrificed to an Idol. A has committed the offence defined in this Section.

(b) A forcibly carries or entices B away from his home in order that B may be murdered. A has committed the offence defined in this Section.

Because the kidnapping or abduction is with the intention to murder, a punishment of corresponding severity is annexed. The second Illustration is of a case of abduction in order to murder.

365. Whoever kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined, shall be punished with imprisonment of either description for a term

Kidnapping or abducting with intent secretly and wrongfully to confine a person.

which may extend to seven years, and shall also be liable to fine.

An enhanced punishment is provided for kidnapping or abduction, when the intention is to commit the offence which is made punishable by Section 346, that is, wrongful confinement in secret.

366. Whoever kidnaps or abducts any woman Kidnapping or abducting a woman to compel her marriage, &c. with intent that she may be compelled, or knowing it to be likely that she will be compelled to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

The will of the woman may ultimately be gained over, but this will not affect the offence, when the kidnapping or abduction is with the knowledge or intention which the Section mentions. Whoever kidnaps or abducts any woman (see Section 10) having himself such criminal intention or with a purpose or knowledge that she may be forced to marry, or forced or seduced to illicit sexual intercourse, commits the offence here made punishable.

367. Whoever kidnaps or abducts any person in Kidnapping or abducting in order to subject a person to grievous hurt, slavery, &c. order that such person may be subjected, or may be so disposed of as to be put in danger of being subjected to grievous hurt, or slavery, or to the unnatural lust of any person, or knowing it to be likely that such person will be so subjected or disposed of, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

The kidnapping or abduction of any person whether male or female is punishable, see Sections 370, 377.

368. Whoever, knowing that any person has been kidnapped or has been abducted, wrongfully conceals or confines such person, shall be punished in the same manner as if the offender had kidnapped or abducted such person with the same intention or knowledge or for the same purpose as that with or for which he conceals or detains such person in confinement.

To constitute the offence, the concealment or confinement must be by a person who knows of the kidnapping or abduction, and must also be wrongful. A concealment of one who has escaped from slavery or who endeavours to avoid his kidnappers who are in pursuit of him is not an offence.

This mode of abetment by aid is punishable in the same manner as the substantive offence which is abetted.

369. Whoever kidnaps or abducts any child under the age of ten years with the intention of taking dishonestly any moveable property from the person of such child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall be liable to fine.

Such offences as the enticing away of children with no intention of taking them from their parents, but for the purpose of stealing ornaments from their persons, are punishable by this Section. The consent of the child is immaterial.

370. Whoever imports, exports, removes, buys, sells, or disposes of, any person as a slave, or accepts, receives, or detains against his will any person as a slave, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

The sale of a person for the purpose of being dealt with as a slave is not directly prohibited by Act V. of 1843 (for declaring and amending the law regarding the condition of

slavery within the Territories of the East India Company). But as by that Act no person so sold can be dealt with as a slave against his will and no rights arising out of an alleged property in his person and services can be enforced by any Court, the Act contains a virtual prohibition which may be effectual as regards adults who can avail themselves of the protection of the law.

By the present Section the sale or disposal of any person "as a slave," that is, on the pretext of his being in a condition of slavery, is made punishable as an offence.

The Clause extends not only to those immediately concerned in the contract of sale or disposal, but extends to those who aid them by knowingly conveying or removing the person who is the subject of the bargain, or by knowingly receiving or detaining such person as a slave.

The Section is general and prohibits the traffic in all human beings, whether children of tender years or adults. It frequently happens that persons in time of famine, or when reduced to extreme destitution from other causes, dispose of their children in exchange for grain or money in order to save themselves as well as the children from starvation. It is said that the Hindoo law empowers parents (but no other persons,) to sell or barter their offspring under such circumstances ; and it is certain that, in seasons of calamity, the practice of purchasing and selling children saves a great number from starvation. At other times parents dispose of their young children to dancing girls, or to people of certain castes who either purchase or receive them in gift to bring them up to their trade or calling.

The Section does not extend to the punishment of parents for the mere sale or disposal of their children. The offence which this Section prohibits is the sale or disposal of a child or other person "as a slave." There may be lawful contracts for the transfer of a child by its parents either for a time or permanently to another person ; as in the case of a child whose parents permit it to be adopted by others, or in the case of a child who is

apprenticed or put out for a time to learn a lawful trade or calling, &c. These, it is needless to say, are not offences against this or any other Section of the Code. But care should be taken that the law is not eluded by some device or pretence of a contract. When the substance of the transaction is an attempt to give a property in the person and services of a human being, that person is disposed of "as a slave" within the meaning of this Section, whatever form the parties to the transaction, may attempt to give it.

Any person being a subject of the Queen, who commits within the territories of any Native Prince this offence of selling or disposing of as a slave any fellow-subject, may be punished under this Clause.

371. Whoever habitually imports, exports, removes, buys, sells, traffics or deals in slaves, shall be punished with transportation for life, or with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

Habitual dealing in slaves.

This Section is for the punishment of the slave-trader, who is habitually engaged in the traffic of buying and selling human beings. The Section extends to masters of vessels and other persons who habitually aid this traffic by importing, exporting, or removing the subjects of it.

See the note to the preceding Section.

372. Whoever sells, lets to hire, or otherwise disposes of any minor under the age of sixteen years with intent that such minor shall be employed or used for the purpose of prostitution or for any unlawful and immoral purpose, or knowing it to be likely that such minor will be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Selling or letting to hire a minor for purposes of prostitution, &c.

This offence may be committed not only by parents, guardians and other persons, having a lawful charge or custody of minors, but also by persons who may have obtained possession of them by kidnapping or abduction. The consent of the minor is immaterial.

The Section applies to the sale or disposal of any minor, whether male or female, with the guilty intention or knowledge which is expressed. It will be noticed that besides the purpose of prostitution, there is mentioned "any unlawful and immoral purpose." This expression not being in the disjunctive, as it occurs in the Exception to Section 361, the guilty intention which it is necessary to establish is an intention to use the minor for a purpose as well unlawful as immoral.

In many of the cases contemplated by this Section, there are written documents purporting to sell, or to let to hire for a number of years the minor or the minor's services. Not uncommonly a young female child is thus let to a procuress. The written contract cannot in such case disguise the true object of the parties.

373. Whoever buys, hires or otherwise obtains possession of any minor under the age of sixteen years with intent that such minor shall be employed or used for the purpose of prostitution, or for any unlawful and immoral purpose, or knowing it to be likely that such minor will be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Professional bawds who become the recipients of minors disposed of under the preceding Section or who in any other way obtain possession of the persons of minors with the intention or knowledge mentioned in the Section, are here made punishable. The Section extends also to persons who get possession of minors for the gratification of their own lusts or passions.

374. Whoever unlawfully compels any person to labour against the will of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Unlawful compulsory labor. Compulsory labour is by various laws now in force permitted.

Under the General Exceptions of the Code nothing is an offence which is done by a person who is justified by law. Where there is no law to justify it, the compelling of a person by force, or by threats which reasonably cause him to apprehend hurt or injury, to labour against his free will is an offence.

OF RAPE.

375. A man is said to commit "rape," who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the five following descriptions :

First. Against her will.

Secondly. Without her consent.

Thirdly. With her consent, when her consent has been obtained by putting her in fear of death, or of hurt.

Fourthly. With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly. With or without her consent, when she is under ten years of age.

Explanation. Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

"A woman" that is a female human being of any age (see Section 10). In this definition of rape, the first description ("against her will") is, where the woman is in possession of her senses, and therefore capable of consenting; the second

("without her consent") is, where she is insensible whether from drink or any other cause, or so imbecile that she is incapable of any rational consent; the fifth is, where the intercourse is with a child so young that consent is immaterial. In the third and fourth descriptions of rape there is consent, but it is not such a consent as excuses the offender, because in the one case it is extorted by putting the woman in fear, and in the other it is obtained by deception of a particular kind. Mere deception by false promises or other such deceitful means, will not generally affect or vitiate a consent.

As to that part of the third description of rape which relates to consent obtained by fear of hurt, it may be observed that if it appeared on the trial of a man on a charge of rape, that he had obtained the consent of the woman without doing anything that could put her into fear of more than a very trivial hurt, there would be just ground for doubting whether it was really proved that she had consented through fear.

Exception. Sexual intercourse by a man with his own wife, the wife not being under ten years of age, is not rape.

The early age at which children are married and are in the eye of the law, wives, makes it necessary that they should be protected till they are of an age to reside with their husbands. Cases of forcible violation and great injury to children where the offenders are the husbands may occur, to meet which the Exception is limited and applies only where the wife is not less than ten years of age. Although marriages are commonly contracted among Mahomedans and Hindoos before the age of puberty, yet usually the bride remains in the house of her parents till she is of a fit age for the consummation of the marriage, and it may fairly be presumed that the parents, her natural guardians will, in general, take care to prevent abuse in this respect. There may, however, be instances in which the check of the law may be necessary to restrain men from taking advantage of their marital right prematurely.

According to the Explanation, penetration is sufficient to constitute the offence. It seems that any penetration, though short of rupturing the hymen, is sufficient.

376. Whoever commits rape shall be punished
 with transportation for life, or
 with imprisonment of either
 description for a term which may extend to ten
 years, and shall also be liable to fine.

Punishment for rape.

The general Exceptions which exempt infants, idiots, &c. from criminal responsibility are of course applicable to this, as to all other penal provisions of the Code. But in the offence of rape, there may be, by reason of immaturity of the body, a want of physical capacity to commit the offence on the part of a child between the ages of seven and twelve years, whose understanding is nevertheless sufficiently matured to judge of the nature of his conduct. If a child is charged with the offence it must be proved by the prosecution, that the child was physically capable as well as of competent understanding ; unless he is charged as an abettor, in which case no question concerning his physical capacity can arise. It must appear that the offence was committed against the will of the woman, or as the case may be, without her free consent, according to the several descriptions of the offence mentioned in the definition. It is no excuse that she yielded at last to the violence, if her consent was forced from her by fear of death or by duress. Nor is it any excuse, that she consented after the fact, or that she was a common strumpet ; for she is still under the protection of the law, and may not be forced ; or that she was first taken with her own consent, if she was afterwards forced against her will ; or that she was a concubine to the ravisher, for a woman may forsake her unlawful course of life, and the law will not presume her incapable of amendment. All these circumstances, however, are material for consideration in favour of the accused, more especially in doubtful cases, and where the woman's testimony is not corroborated by other evidence.

The party ravished, may give evidence and is a competent witness, but the credibility of her testimony must be considered by the Court. Her evidence will be more or less credible, according to the circumstances of fact that concur in it. For instance, if the witness be of good fame, if she forthwith discovered the offence, and made pursuit after the offender, and showed circumstances and signs of the injury ; if the place in which the fact was done, was remote from people, inhabitants, or passengers ; if the offender fled ; these, and the like are concurring evidences to give greater probability to her testimony, when proved by others as well as herself. On the other hand, if she concealed the injury for any considerable time, after she had an opportunity to complain ; if the place where the fact was supposed to have been committed was near to inhabitants, or the common recourse or passage of passengers, and she made no outcry when the fact was supposed to be done, where it was probable she might have been heard by others, such circumstances carry a strong presumption that her testimony is false.

377. Whoever voluntarily has carnal intercourse against the order of nature with any man, woman, or animal, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation. Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this Section.

It is not necessary to prove that the act was against the will or without the consent of the person upon whom the offence is committed. If that person is consenting, both are guilty of the offence.

CHAPTER XVII. OF OFFENCES AGAINST PROPERTY.

The* offences defined in this Chapter are made punishable on the ground that they are violations of the right of property. But the right of property is itself the creature of the law. It is evident, that if the substantive civil law touching this right be imperfect or obscure, the penal law, which is auxiliary to that substantive law, and of which the object is to add a sanction to that substantive law, must partake of the imperfection or obscurity. If it be matter of doubt what things are the subjects of a certain right, in whom that right resides, and to what that right extends, it must also be matter of doubt whether that right has, or has not, been violated.

For example, A, without Z's permission, shoots snipes on Z's ground, and carries them away; here, if the law of civil rights grants the property in such birds to any person who can catch them, A has not, by killing them and carrying them away, invaded Z's right of property. If, on the other hand, the law of civil rights declares such birds the property of the person on whose lands they are, A has invaded Z's rights of property. If it be matter of doubt what the state of the civil law on the subject actually is, it must also be matter of doubt whether A has wronged Z, or not.

By the English law, pigeons, while they frequent a dove-cote, are the property of the owner of the dove-cote. By the Roman law they were not so. By the French law they are his property at one time of the year, and not his property at another. Here it is evident that the taking of such a pigeon, which would, in England, be a violation of the right of property, would be none in a country governed by the Roman law,

* This is a part of the note appended to the Chapter of Offences against Property by the Indian Law Commissioners.

and that, in France it would depend on the time of the year whether it were so or not.

A lends a horse to B. B sells the horse to Z, who buys it believing in good faith that B has a right to sell it. A sees the horse feeding. He mounts it, and rides away with it. Here, if the law of civil rights provides that a thing sold by one who has no right to sell it, shall nevertheless be the property of a *bonâ fide* purchaser, A has invaded a right of property. If, on the other hand, A's right is not affected by what has passed between B and Z, A does not commit an infraction of Z's right of property. If it be doubtful whether the right to the horse be in A, or in Z, it must also be doubtful whether A has or has not committed an infraction of Z's right.

A path running across a field which belongs to Z has, during three years, been used as a public highway. A, in spite of a prohibition from Z, uses it as such. Here if by the civil law, an usage of three years is sufficient to create a right of way, A has committed no infraction of Z's right. But if a prescription of more than three years or an express grant be necessary, to create a right of way, A has committed an infraction of Z's right of property.

A discovers a mine on land occupied by him. Here, if the civil law assigns all minerals to the occupier of the land, A violates no right of property by appropriating the minerals. But if the civil law assigns all minerals to the Government, A violates the right of property by such appropriation.

The sea recedes, and leaves dry land in the immediate neighbourhood of Z's property, Z cultivates the land. A turns cattle on the land, and destroys Z's crops. Here, if the civil law assigns alluvial additions to the occupier of the nearest land, A is a wrong-doer. If it declares alluvial additions common, A is not a wrong-doer. If it assigns alluvial additions to the Government, both Z and A are wrong-doers. If it be uncertain to whom the law assigns alluvial additions, it must be also uncertain who is the wrong-doer, and whether there be any wrong-doer.

The substantive civil law, in the instances which have been given, is different in different countries, and in the same country at different times. As the substantive civil law varies, the penal law, which is added as a guard to the substantive civil law, must vary also. And while many important questions of substantive civil right are undetermined, the Courts must occasionally feel doubtful whether the provisions of the Penal Code do or do not apply to a particular case.

It would, evidently, be impossible to determine in the Penal Code all the momentous questions of civil right which, in the unsettled state of Indian Jurisprudence, will admit of dispute. Many things are taken for granted in the Illustrations which properly belong to the domain of the civil law, because, it was probably found impossible to explain the operation of the law without doing this. But questions respecting which, even in the present state of Indian jurisprudence, much doubt could exist, are avoided. And the text of the law is confined as closely as possible to what is in strictness the province of a Penal Code. Punishments are provided for the infraction of rights, without determining in whom those rights vest, or to what those rights extend.

All the violations of the rights of property which are made punishable by this Chapter, fall under one or more of the following heads :—

1. Theft.
2. Extortion.
3. Robbery and Dacoity.
4. Criminal Misappropriation of Property.
5. Criminal Breach of Trust.
6. Receiving of Stolen Property.
7. Cheating.
8. Fraudulent Deeds and Dispositions of Property.
9. Mischief.
10. Criminal Trespass.

OF THEFT.

378. Whoever intending to take dishonestly any
Theft.
 moveable property out of the
 possession of any person with-
 out that person's consent, moves that property in
 order to such taking, is said to commit theft.

The following words in the definition here given of the offence of theft will be found explained in the Chapter of General Explanations—"dishonestly" (Section 24), "moveable property" (Section 22), possession (Section 27), and "consent" (Section 90).

The Explanations and numerous Illustrations which are subjoined to the definition elucidate its terms; it may nevertheless be convenient to arrange these several Explanations and Illustrations each under the portion of the definition which it is meant to explain and to illustrate.

1. "Whoever intending to take dishonestly any *moveable property*." Moveable property only and no other description of property, can be the subject of theft. It has been explained that these words "moveable property" are intended to include corporeal property of every description, except land and things attached to land (Section 22).

It will be necessary on a charge of theft that the Court should be satisfied that the thing stolen is not only moveable but also that it is a subject of *property*: and this the Court must do, as has been before observed in cases where any doubt arises by a reference to the substantive civil law. Cases of difficulty will seldom occur: probably when they do happen, they will generally be of the description mentioned in one of the Illustrations which has been already given, that is to say where the theft is of animals, wild by nature, but which have been in some degree reclaimed or brought under the dominion of man. Whether the thing stolen is of this or of any other description, the officers who administer the Code in the absence of any clear guidance from the civil law upon the question, whether the thing is or is not a

subject of property may fairly lean to that construction which will give the protection of this portion of the Penal Law to any thing, however intrinsically valueless, which can justly be considered to be in the possession of a person and to have in the eye of that person some value.

Many moveable things which are of small intrinsic value become very valuable when they show a title to property or constitute the evidence of a legal right. A piece of paper or parchment may thus acquire great value. By what is written upon it the material may become a title-deed or mortgage deed, or a bond, bill of exchange, promissory note, &c. It seems that any of these documents, as well deeds relating to land, as documents and tokens showing a right to moveable property or any other right, and written contracts or agreements may be the subject of theft.

By the English Common Law, the title-deeds of land are not the subject of larceny* nor are documents (called *choses in action*) such as bonds, bills of exchange, &c. which concern a matter resting in contract and which give a right by way of contract only.

As the Penal Code when it punishes theft leaves it to the civil law to determine what things can be the subjects of theft, or in other words, what things are included in the words "moveable property" or "corporeal property of every description" (see Section 22), it may be, that in cases to which the English Civil law of property applies, the theft of such documents as those above mentioned, is not an offence punishable under this portion of the Code.

It is not a part of the definition itself of theft, that the moveable property should be of some assignable value. On this subject, the framers of the Code after referring to the 95th Section which provides that nothing shall be an offence by reason of

* The state of the law in this respect was well remarked upon a hundred years ago by counsel in argument : "If I steal a skin of parchment worth a shilling it is a felony, but when it has ten thousand Pounds added to its value by what is written upon it, it is no offence to take it away."

any harm which it may cause or be likely to cause, if the whole of that harm is so slight, that no person of ordinary sense and temper would complain of such harm, say,—“ This provision will prevent the law of theft from being abused for the purpose of punishing those venial violations of the right of property which the common sense of mankind readily distinguishes from crimes, such as the act of a traveller who tears a twig from a hedge, of a boy who takes stones from another person’s ground to throw at birds, of a servant who dips his pen in his master’s ink. It does not appear to us that any further rule on this subject is necessary.”

Things attached to the earth are not the subject of theft, because they are not moveable : but they may become so.

Explanation 1. A thing so long as it is attached to the earth, not being moveable property, is not the subject of theft ; but it becomes capable of being the subject of theft as soon as it is severed from the earth.

Illustrations.

(a) A cuts down a tree on Z’s ground, with the intention of dishonestly taking the tree out of Z’s possession, without Z’s consent. Here, as soon as A has severed the tree, in order to such taking, he has committed theft.

If the property be attached to the earth, the mere severing it is not theft ; to constitute theft of any kind, there must be, as is noticed in the definition and hereafter, a moving of that thing after severance. The severance as such, only puts the thing into that condition in which a theft can be committed of it. In many cases things attached to the earth may be severed from it without being moved, and then, if there be no subsequent moving, there is no theft. If indeed the same act which effects the severance, also effects a moving of the thing, as in the case supposed in the Illustration, that moving is sufficient ; but in many cases things attached to the earth may be severed from it without being moved ; and then, if there be no subsequent moving, there is no theft. For example, a trunk fastened

by a rope to a bolt in the floor or wall of a house is "attached to the earth:" it may, by cutting the rope, be severed without being moved, and this, though it be done with the intention of taking it fraudulently out of the possession of a person without that person's consent, does not amount to theft.

2. Moveable property must be in *the possession of some person*, to be the subject of theft.

In theft, as it is here defined, the object of the offender always is, to take property which is in the possession of a person out of that person's possession. The Code does not admit a single exception to this rule.* Accordingly where the property dishonestly taken is in no person's possession, as where its late possessor is dead, or where it is lost property without any apparent possessor, it is not the subject of theft, but of criminal misappropriation, (see Sections 403, 404).

(g) A finds a ring lying on the high-road, not in the possession of any person. A by taking it commits no theft, though he may commit criminal misappropriation of property.

It is difficult to define by any precise legal scale what shall constitute a distinct possession.† The use or possession of

* The framers of the Code say, "In the great majority of cases our classification will coincide with the popular classification. But there are a few aggravated cases of what we designate as misappropriation and breach of trust, which bear such an affinity to theft, that it may seem idle to distinguish them from thefts. And it certainly would be idle to distinguish such cases from theft, if the distinction were made with a view to those cases alone. But, as we have a line of distinction which we think it desirable to maintain in the great majority of cases, we think it desirable also to maintain that line in the few cases in which it may separate things which are of a very similar description."

† The Indian Law Commissioners observe: "We believe it to be impossible to mark with precision, by any words, the circumstances which constitute possession. It is easy to put cases about which no doubt whatever exists, and about which the language of lawyers and of the multitude would be the same. It will hardly be doubted, for example, that a gentleman's watch lying on a table in his room is in his possession, though it is not in his hand, and though he may not know whether it is on his writing table, or on his dressing-table. As little will it be doubted that a watch which a gentleman lost a year ago on a journey and which he has never heard of since, is not in his possession. It will not be doubted that when a person gives a dinner, his silver forks, while in the hands of his guest, are still in his possession; and it will be as little doubted that his silver forks are not in his possession when he has deposited them with a pawnbroker as a pledge. But between these extreme cases lie many cases in which it is difficult to pronounce, with confidence, either that property is, or that it is not, in a person's possession. This difficulty, sufficiently great in itself, would, we conceive, be in-

property on the premises of the owner, or in the presence and under the superintendence of the owner or his agent, or where he, or his agent, are sufficiently near to exercise a control and superintendence over the property, may, without difficulty, be considered to constitute a continuing possession by the proprietor. It is a question of fact rather than of law whether, under the circumstances of any particular case, property continues in a person's possession notwithstanding that it is also subject to the occupation of another: but if the occupant has a bare charge, and nothing beyond this is entrusted to him, his mere occupation does not disturb or affect the owner's possession. A master continues in possession of his plate, his horses, &c. while they are under the care of his servants.

In general it is left to the tribunals without any direction to determine whether particular property is at a particular time in the possession of a particular person or not. But, for the purpose of preventing any difference of opinion from arising in cases likely to occur very often, a few rules are laid down which may be supposed to be in accordance with the general sense of mankind as to what shall be held to constitute possession. Property in the possession of a person's wife, clerk or servant on account of that person is deemed to be in that person's possession (see Section 27). Property in the possession of a young child or of a lunatic, if such child or lunatic be in the keeping of a guardian may be deemed to be in the possession of the guardian.

Much uncertainty will still remain. This cannot be prevented, but the provision contained in the 72d Section will prevent the uncertainty from producing any practical evil or inconvenience which might arise from doubts occurring under this or any other term of the definition of theft, as to the exact limits which separate this offence from misappropriation, breach of trust, &c.

creased by laws which should pronounce that in a set of cases arbitrarily selected from the mass property is in the possession of some party in whose possession according to the understanding of all mankind it is not."

The following illustrations of this part of the definition are given—

(*d*) A, being Z's servant, and entrusted by Z with the care of Z's plate, dishonestly runs away with the plate, without Z's consent. A has committed theft.

(*e*) Z, going on a journey, entrusts his plate to A, the keeper of a warehouse, till Z shall return. A carries the plate to a goldsmith and sells it. Here, the plate was not in Z's possession. It could not therefore be taken out of Z's possession, and A has not committed theft, though he may have committed criminal breach of trust.

(*f*) A finds a ring belonging to Z on a table in the house which Z occupies. Here, the ring is in Z's possession, and if A dishonestly removes it, A commits theft.

The reason why the first of these cases is brought under theft is, that the plate of Z taken by his servant A, was still in Z's possession, though it was also actually in A's possession or charge. In Illustration (*f*) Z's ring is in his possession, because it is on a table in the house which he occupies.

The other Illustration (*e*) points out the difference between theft and breach of trust in circumstances nearly similar to those mentioned in Illustration (*d*). The plate having been entrusted to the keeper of the ware-house, was no longer in Z's possession, and could not therefore be taken out of Z's possession.

A bailment, that is, a delivery of moveable property to a person and possession of it by that person for a special purpose, as a delivery to a carrier to carry, to a warehouse-keeper to keep &c., makes that person (the bailee) the possessor of the property : while the bailment lasts he is the rightful possessor, and a dishonest taking from him, during this temporary possession, amounts to theft.

But the possession which the definition requires need not, it seems, be a lawful possession. Suppose the property comes into the hands of the accused person rightfully in the first instance for a particular purpose, and he retains it wrongfully after that purpose is at end ; his possession is a sufficient possession within the meaning of this definition as against one who takes the property " dishonestly," that is, with

the intention of gaining by unlawful means that to which he is not legally entitled. As if a person, to whom a horse is lent for a certain time refuses, at the expiration of that time, to return the horse to his lawful owner, the possession continues in the borrower until it is in some way resumed by the original owner. Even, if stolen goods, being in the possession of the thief, are dishonestly taken from him, this possession seems sufficient to make the second taker a thief within the definition.

But there must be a possession of the property before it can be the subject of theft. Suppose a piece of stamped paper is handed to a person to write a receipt upon it for money about to be paid to him, and after he has written, the paper is forthwith seized and taken away by the person who brought it; here it was never intended that the writer should retain this paper, and the paper was never in his possession so as to be the subject of theft from him. In the case above supposed, the owner of the horse does not become the possessor until he in some way resumes his possession. But if the horse is in the hands of a third person when the time for which it was lent expires, the possession of such person may become, by arrangement, the owner's possession.

It will be observed that the definition does not render it necessary to ascribe the property to any person as owner; the person to be named is the person from whose actual possession the property was taken or attempted to be taken; the matter to be charged is that the offender, intending to take dishonestly a particular thing which is property, that is to say, a thing over which some person has a right of property, out of the possession of A, moved that thing in order to such taking.

3. There must be, in order to a taking, a moving of the thing.

Explanation 3. A person is said to cause a thing to move by removing an obstacle which prevented it from moving, or by separating it from any other thing, as well as by actually moving it.

Explanation 4. A person, who by any means causes an animal to move, is said to move that animal, and to move every thing which, in consequence of the motion so caused, is moved by that animal.

(b) A puts a bait for dogs in his pocket, and thus induces Z's dog to follow it. Here, if A's intention be dishonestly to take the dog out of Z's possession without Z's consent, A has committed theft as soon as Z's dog has begun to follow A.

(c) A meets a bullock carrying a box of treasure. He drives the bullock in a certain direction, in order that he may dishonestly take the treasure. As soon as the bullock begins to move, A has committed theft of the treasure.

The 3rd Explanation is illustrated by the following case. A pulls a bung out of a hogshead of liquor in Z's possession with the intention of dishonestly taking some of the liquor without Z's consent. As soon as the liquor begins to flow, A has committed theft.

When the thing is attached to the earth, there can of course be no moving of it within the meaning of this part of the definition, until there has been a severance: thus, motion communicated to a tree before its severance, even if communicated in order and with a view to its severance is not a moving for this purpose; but, as the 2nd Explanation shews, when the severance is complete, the same act which effects it, may also be a sufficient moving to satisfy the definition.

But the moving which the definition requires, is merely a moving in order to a dishonest taking. The offence may be complete notwithstanding that the property continues in the possession of the person holding it. A man may commit theft although the property never quits the possession of the owner, if there is a moving of it with a dishonest intention. As if ~~gain~~ is removed from the owner's store-house without his knowledge, and is taken to his shop and there sold to him as the property of another person; or, as if a workman who is paid for his labour according to the number of skins which he prepares, removes some prepared skins from the heap for which he has received payment and obtains a second time payment for the same skins.

But the moving must take place at a time when the dishonest intention to take exists. (See Illustration *h*.)

4. The intention to take dishonestly. This is the most important part of the definition. It is the intention of the taker which must determine whether the taking or moving of a thing is theft. The intention to take dishonestly exists when the taker intends to cause wrongful gain to one person or wrongful loss to another person (See Sections 33 and 34).

The most simple form of theft consists in a man's fraudulently taking and having as his own that which does not belong to him, his intention being to assume the entire dominion over the thing taken and wholly to despoil and deprive the former owner of his property. But the intention to deprive the owner or possessor for ever of his property, is not according to the Code made necessary to theft.* The intention expressed in the definition is merely to take "dishonestly," and according to the definition of that word, any taking with a purpose of causing wrongful loss by depriving a person of a benefit which he would have enjoyed from the thing if it had not been taken from him, is a dishonest taking thus—

(*D*) A takes an article belonging to Z out of Z's possession without Z's consent, with the intention of keeping it until he obtains money from Z as a reward for its restoration. Here, A takes dishonestly; A has therefore committed theft.

And in the case supposed in Illustration (*d*), if the servant entrusted with the care of the plate, instead of running away with it, had pawned it, he would have been guilty of theft.

* The contrary principle, that there is no theft except where it is intended to deprive the owner for ever of his property would, it has been remarked, "if declared and generally known to be law, and fairly and fully carried out into practice in the administration of the law, be likely to prove productive of great inconvenience and embarrassment. Is it desirable that he who dishonestly takes away another's cloak should be acquitted of theft, on his proving that it was his intention to return it as soon as it became thoroughly threadbare; or that a man might steal a valuable young horse, without any danger of being punished as a thief, so long as he intended, and took care to provide proof of his intention to restore the animal to its owner when it attained the age of twelve years, or sooner if it should happen to become irrecoverably lame?"

It will be seen from the following Illustrations that the owner of property may, by taking it *dishonestly*, commit theft of his own property.

(j) If A owes money to Z for repairing the watch, and if Z retains the watch lawfully as a security for the debt, and A takes the watch out of Z's possession with the intention of depriving Z of the property as a security for his debt, he commits theft, inasmuch as he takes it dishonestly.

(k) Again if A, having pawned his watch to Z, takes it out of Z's possession without Z's consent, not having paid what he had borrowed on the watch, he commits theft, though the watch is his own property, inasmuch as he takes it dishonestly.

Where there is no intention to take dishonestly, there is no theft.

(p) A, in good faith, believing property belonging to Z to be A's own property, takes that property out of B's possession. Here, as A does not take dishonestly, he does not commit theft.

The case supposed in this Illustration is one in which the taker honestly believes the property taken to be his own. It will be the same if the property is taken by mistake, as if the sheep of A stray from his flock into the flock of B and the latter by mistake treats them as his own. But the taking of property by mistake is an excuse, which must not be admitted too readily. If the taker appears desirous of concealing the thing taken, or of preventing the inspection of it by the owner, or by any other person who might make the discovery, or if, being asked, he denies having the property, although the knowledge of his having it be proved, these are circumstances tending to show a dishonest taking.

(i) A delivers his watch to Z, a jeweller, to be regulated. Z carries it to his shop. A, not owing to the jeweller any debt for which the jeweller might lawfully detain the watch as a security, enters the shop openly, takes his watch by force out of Z's hand and carries it away. Here A, though he may have committed criminal trespass and assault, has not committed theft, inasmuch as what he did was not done dishonestly.

In this case the taking by A of his own property, in respect of which Z had no claim, is not a dishonest taking, for his gain is not wrongful gain (see Section 23). It may be that he gains

by unlawful means, because he takes his watch by force. But he does not gain "property to which he is not legally entitled," for the watch is his own, and he is entitled to possess it. If he enforces his just rights by improper means, he may be guilty of an offence, but is not guilty of the offence of theft.

In the Illustrations (j) and (k) he takes dishonestly because he causes wrongful loss (see Section 23) to the watchmaker and pawn-broker, who had an interest in the watch to the extent of their claims.

The intention to take dishonestly, must exist at the time of the moving of the property in order to such taking.

(h) A sees a ring belonging to Z lying on a table in Z's house. Not venturing to misappropriate the ring immediately for fear of search and detection, A hides the ring in a place where it is highly improbable that it will ever be found by Z, with the intention of taking the ring from the hiding-place, and selling it when the loss is forgotten. Here A, at the time of first moving the ring, commits theft.

If Z deliver the ring to A a jeweller to repair and A takes it away for this purpose, a subsequent misappropriation of the ring by him will not make this a theft.

5. There must be an intention to take the property without the consent of the person in possession of the property. A consent is not such a consent as is intended by this or by any other Section of the Code if it is given under fear or misconception &c. (see Section 90).

Explanation 5. The consent mentioned in the definition may be express or implied, and may be given either by the person in possession, or by any person having for that purpose authority either express or implied.

(m) A, being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent for the purpose merely of reading it, and with the intention of returning it. Here, it is probable that A may have conceived that he had Z's implied consent to use Z's book. If this was A's impression, A has not committed theft.

(n) A asks charity from Z's wife. She gives A money, food, and clothes, which A knows to belong to Z her husband. Here, it is probable that A may conceive that Z's wife is authorized to give away alms. If this was A's impression, A has not committed theft.

(o) A is the paramour of Z's wife. She gives A valuable property which A knows to belong to her husband Z, and to be such property as she has not authority from Z to give. If A takes the property dishonestly he commits theft.

If a person takes dishonestly the husband's goods and the wife knows of the taking and consents to it, such a consent will be of no avail. If the taker is a person with whom the wife has committed or intends to commit adultery, her consent to the taking is in this case of no avail.

In cases to which the English law is applicable, if a wife takes dishonestly moveable property of which her husband is the joint or sole owner, the taking would probably not be deemed a theft within this Code, because the husband and wife are in that law but one person, and the wife has a kind of interest in the goods.

379. Whoever commits theft shall be punished
Punishment for theft. **with imprisonment of either**
description for a term which may extend to three
years, or with fine, or with both.

In the punishment awarded to theft not only is no limit set to the shortness of the period for which the offender may be sentenced to imprisonment, but at the discretion of the judge imprisonment may be entirely dispensed with, and a fine imposed as the whole punishment. In awarding the punishment for theft the judge may also, by adding fine to imprisonment, deprive the offender of his wrongful gain, and under the (probable) provisions of the Criminal Procedure Code, may apply the fine to compensate the loss sustained by the sufferer. If it is uncertain whether the offence is theft, or misappropriation, or breach of trust, the provision contained in the 72nd Section will obviate all inconvenience which might arise from such doubts.

380. Whoever commits theft in a building, tent, Theft in a building tent or vessel. or vessel, which building, tent, or vessel is used as a human dwelling, or for the custody of property, shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine.

381. Whoever being a clerk or servant, or being Theft by clerk or servant of property in possession of master. employed in the capacity of a clerk or servant, commits theft in respect of any property in the possession of his master or employer, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Property is in the possession of the master or employer, not only when it is in his actual manual possession, but also when it is in the possession of a clerk or servant on his account. And a person employed temporarily, or on a particular occasion in the capacity of a clerk or servant, will, it seems, come within the terms of this Section. If the master buys goods and sends his servant to receive them, and the servant dishonestly carries them away, he may, it seems, be punished under this Section. The master has the possession of the goods, when they are received by the servant for the master's use ; they are delivered to the servant on account of the master and being thus in his possession, they are, within the meaning of this Code, in the master's possession.

A clerk or servant who has not merely a bare possession or charge, but who is entrusted in such capacity with property or with any dominion over property is punishable by the 408th Section, if he commits a criminal breach of trust.

382. Whoever commits theft, having made preparation for causing death, or hurt, or restraint, or fear of death, or of hurt, or of restraint, to any person, in order Theft after preparation made for causing death or hurt in order to the committing of the theft.

to the committing of such theft, or in order to the effecting of his escape after the committing of such theft, or in order to the retaining of property taken by such theft, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Illustrations.

(a) A commits theft on property in Z's possession ; and, while committing this theft, he has a loaded pistol under his garment, having provided this pistol for the purpose of hurting Z in case Z should resist. A has committed the offence defined in this Section.

(b) A picks Z's pocket, having posted several of his companions near him, in order that they may restrain Z, if Z should perceive what is passing and should resist, or should attempt to apprehend A. A has committed the offence defined in this Section.

The Illustrations will shew the operation of this Section. The Section applies only to cases in which the offence of theft has actually been committed. A mere attempt to commit theft after such preparation for causing death or hurt &c. is not punishable under this Section.

OF EXTORTION.

Extortion, like theft, belongs to that class of offences, into the definition of which the intention of causing wrongful gain enters. The dishonest intention to obtain property is common to both these offences ; but in theft, the object of the offender is to take property which is in the possession of a person out of that person's possession, and it is part of the definition that the offender's intention should be to take "without that person's consent."

The offence of extortion is distinguished from theft by this obvious circumstance that it is committed by the wrongful obtaining of a consent, and not without consent. It is distinguishable from robbery by this feature that the property is obtained by means of such fear of injury as does not amount to the fear of instant death or personal hurt which is part of the offence of robbery.

383. Whoever intentionally puts any person in
Extortion. fear of any injury to that person or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security or any thing signed, or sealed which may be converted into a valuable security, commits "extortion."

Illustrations.

(a) A threatens to publish a defamatory libel concerning Z, unless Z gives him money. He thus induces Z to give him money. A has committed extortion.

(b) A threatens Z that he will keep Z's child in wrongful confinement, unless Z will sign and deliver to A a promissory note binding Z to pay certain monies to A. Z signs and delivers the note. A has committed extortion.

(c) A threatens to send club-men to plough up Z's field unless Z will sign and deliver to B a bond binding Z under a penalty to deliver certain produce to B, and thereby induces Z to sign and deliver the bond. A has committed extortion.

(d) A by putting Z in fear of grievous hurt, dishonestly induces Z to sign or affix his seal to a blank paper and deliver it to A. Z signs and delivers the paper to A. Here, as the paper so signed may be converted into a valuable security, A has committed extortion.

According to this definition, the offence consists in intentionally intimidating a person by threats or otherwise, and thereby causing a dishonest transfer or delivery of property from such person to any other person.

1. "Puts any person in fear of any injury." The wide interpretation of the word "injury" must be borne in mind; (see Section 44). Whether a person has in fact been put in fear of injury is a matter which the Court must decide. The age, sex and situation of the person threatened may properly be taken into consideration. It seems necessary to constitute the offence that the person threatened should be actually put in fear; upon the whole of the facts, however, if there is reason enough to say that similar circumstances would ordinarily excite fear in persons of the same age, &c., as the person threatened, the Court will not too easily listen to suggestions or evidence adduced to shew that the passion of fear was not in truth aroused. Nor on the other hand, considering that the

proof that he was put in fear will often mainly be the evidence of the person threatened, and that exaggerated if not false versions of the occurrence are not improbable, should the charge of extortion be considered as established without a cautious investigation.

The injury which excites fear may be threatened to the person put in fear or to any other person. Elsewhere the expression usually is in similar cases "any person in whom he is interested." The Illustration (b) puts a threat to Z concerning Z's child. But from the generality of the expression, it seems that no tie of relationship is requisite. If in fact the fear of injury is excited, it matters not that another person, be he who he may, is the supposed object of such injury. And it is not apparently essential that there should be a well-founded ground for apprehending that injury will be sustained by any person. For if a person is put in fear and if this is done not by accident or without design but intentionally, this part of the definition is fulfilled.

"Thereby induces the person so put in fear to deliver," &c. The essential ingredient in extortion is, that the offender dishonestly induces the person put in fear to deliver property. The Court must see sufficient reason to believe that in consequence of the putting in fear, and in accordance with the intention of the offender, a dishonest transfer of property has been brought about; that the delivery has been caused by the threats, &c., of a person who had the intention of causing wrongful loss to the person put in fear, or wrongful gain to himself or to some other person.

The delivery of the property may be direct from the person threatened to the offender or to another person by his direction, or it may be by placing the property in some place of deposit, or by otherwise putting it at the immediate disposal of the offender.

The subjects of extortion are, it seems, the same as the subjects of theft, although the word "moveable" is not used in this definition.

“Valuable security.” These words have been explained (see Section 30). It is clear that any document which is denoted by these words may be the subject of the offence of extortion, even if it should be deemed not to be moveable property, and therefore not to be included in the definition of theft.

“Any thing signed,” &c. According to English Law these words would be understood thus. A signs his name to a blank paper or to a promissory note in which dates, sums, &c., are not filled up; or A having caused a deed or a bond to be prepared, has signed and sealed it, but has not yet delivered it as his deed, this act of delivery being that which gives full legal effect and operation to the instrument. In each of these cases, the blank note and the incomplete deed is a subject of extortion.

384. Whoever commits extortion, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Punishment for extortion.

Notwithstanding the circumstance that there is something approaching to bodily injury (putting in fear of injury) in extortion, the punishment which may be awarded is not greater than for theft. The theft of a thing, that is, the taking of it dishonestly without consent, will not usually be an offence of such baseness as the extortion of it, that is, the causing its delivery by a person who consents to deliver it, because he is put in fear and dares not to withhold his consent.

Extortion would appear, except from the wide range given to this offence by the expression “fear of injury” to be a more grave offence and to deserve in its graver form a heavier punishment.

The definition of extortion requires that the person should in fact be put in fear of injury and that the object (delivery of property, &c.,) should be accomplished. It must therefore be proved that the person was put in fear of an injury, whether an injury of body, mind, reputation or property, to himself or

another ;—that the act by which this fear was excited was intentionally done by the accused person ;—that the property was delivered to the accused, or according to his directions to any other person or put in any place by his orders ;—and that this was done “ dishonestly,” as to which a strong inference will arise on proof of the former matters that a dishonest intention existed.

If it is doubtful whether a particular act of extortion amounts to robbery or not, the offender may nevertheless be convicted upon a charge of Extortion. For this and other Sections under the present head are not to be read, as if the words “ unless the offence shall amount to robbery,” or any like words were added. The definition of the lower offence, extortion, includes all cases which are within the definition of the cognate higher offence, extortion amounting to robbery. The offence does not cease to be extortion or to be punishable as such under this division, because it is shown that the extortion is of the kind which may amount to robbery. If the case is doubtful, the proper course is to convict the offender of the crime which, without doubt, he has committed, namely extortion, and to punish him for it. In such a case there is no necessity for resorting to the provision in Section 72.

385. Whoever, in order to the committing of extortion, puts any person in fear, or attempts to put any person in fear of any injury, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

A distinction between the inchoate and the consummated offence, is recognized. The attempt to commit extortion has proceeded so far towards completion that a person has been put in fear of injury, or that there has been an attempt to excite such fear ; but the offence is incomplete because there has been no delivery of property, &c. The Court must be satisfied

that the putting in fear is with the intention of extorting a delivery of property.

386. Whoever commits extortion by putting any person in fear of death or of grievous hurt to that person or to any other, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Extortion by putting person in fear of death or grievous hurt.

Some of those things which come within the definition of "extortion," are distinguished by a description from the remainder, and a more severe punishment is provided for them. These are extortions by putting in fear of death or of grievous hurt. Such extortion is not robbery, unless the offender is at the time of committing it in the presence of the person put in fear, and the fear is of instant death, &c.

387. Whoever, in order to the committing of extortion, puts or attempts to put any person in fear of death or of grievous hurt to that person or to any other, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Putting person in fear of death or of grievous hurt in order to commit extortion.

See the note to Section 385.

The attempt to commit the aggravated extortion made punishable by the preceding Section, is here punished.

388. Whoever commits extortion by putting any person in fear of an accusation against that person or any other, of having committed, or attempted to commit any offence punishable with death, or with transportation for life, or with imprisonment for a term which may extend to ten years, or of having attempted to induce any other person to commit such offence, shall be punished with imprisonment of either

Extortion by threat of accusation of an offence punishable with death or transportation, &c.

description for a term which may extend to ten years, and shall also be liable to fine; and if the offence be one punishable under Section 377 of this Code, may be punished with transportation for life.

Here as in the 386th Section, a heavier punishment is provided for extortion, when it is committed with certain circumstances of aggravation. "In fear of an accusation." This expression probably applies to threats of charging a person falsely before a judicial tribunal or some public authority with the commission of an offence.

389. Whoever, in order to the committing of extortion, puts or attempts to put any person in fear of an accusation, against that person or any other, of having committed or attempted to commit an offence punishable with death or with transportation for life, or with imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if the offence be one punishable under Section 377 of this Code, may be punished with transportation for life.

Putting person in fear of accusation of offence in order to commit extortion.

See notes to Sections 385—388.

OF ROBBERY AND DACOITY.

The offence of robbery is distinct from theft or extortion, but in every robbery, either the offence of theft or the offence of extortion, will be committed. It must not be supposed that what is robbery cannot be, or ceases to be, extortion or theft. The line of separation is drawn not between the offence of robbery and the offence of extortion, but between the extortion which is robbery and the extortion which is not robbery. There is in like manner a line of separation, not between theft and

robbery, but between the theft which is robbery and the theft which is not robbery.

The Indian Law Commissioners observe that " In practice it will perpetually be matter of doubt whether a particular act of robbery was a theft or an extortion. A large proportion of robberies will be half theft, and half extortion. A seizes Z, threatens to murder him, unless he delivers all his property, and begins to pull off Z's ornaments. Z in terror begs that A will take all he has, and spare his life, assists in taking off his ornaments, and delivers them to A. Here, such ornaments as A took without Z's consent are taken by theft. Those which Z delivered up from fear of death are acquired by extortion. It is by no means improbable that Z's right arm bracelet may have been obtained by theft, and left arm bracelet by extortion ; that the Rupees in Z's girdle may have been obtained by theft, and those in his turban by extortion. Probably in nine-tenths of the robberies which are committed something like this actually takes place, and it is probable that a few minutes later neither the robber nor the person robbed would be able to re-collect in what proportions theft and extortion were mixed in the crime, nor is it at all necessary for the ends of Justice that this should be ascertained. For though in general, the consent of a sufferer is a circumstance which very materially modifies the character of the offence, and which ought therefore to be made known to the Courts, yet the consent which a person gives to the taking of his property by a ruffian who holds a pistol to his breast is a circumstance altogether immaterial."

390. In all robbery there is either theft or ex-
 Robbery. tortion.

Theft is " robbery," if, in order to the committing of
 the theft, or in committing
 When Theft is Robbery. the theft, or in carrying away

or attempting to carry away property obtained by the
 theft, the offender, for that end, voluntarily causes or
 attempts to cause to any person death, or hurt, or

wrongful restraint, or fear of instant death, or of instant hurt, or of instant wrongful restraint.

Illustrations.

(a) A holds Z down, and fraudulently takes Z's money and jewels from Z's clothes, without Z's consent. Here A has committed theft, and, in order to the committing of that theft, has voluntarily caused wrongful restraint to Z. A has therefore committed robbery.

Theft aggravated by actual or attempted violence, as by causing fear of violence, is robbery. Whether this aggravation precedes the commission of the theft or accompanies it, or follows it, if the end in view be theft, the offender has committed the kind of theft which is robbery. But the definition requires violence (actual or attempted), or a causing of fear of present instant death or violence.

And the violence or fear whether it is offered or caused to him whose property is stolen or to another, must be immediately connected with the theft. If A is carrying away stolen property from the place of theft and meets upon the road and hurts a Police Officer or private person who suspects and desires to detain him, this does not make his offence of theft a robbery; but he commits a distinct offence.

Extortion is "robbery," if the offender, at the time of committing the extortion, is in the presence of the person put in fear, and commits the extortion by putting that person in fear of instant death, of instant hurt, or of instant wrongful restraint to that person, or to some other person, and, by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted.

Explanation. The offender is said to be present if he is sufficiently near to put the other person in fear of instant death, of instant hurt, or of instant wrongful restraint.

(b) A meets Z on the high road, shews a pistol, and demands Z's purse. Z in consequence surrenders his purse. Here, A has extorted the purse from Z by putting him in fear of instant hurt; and being at the time of committing the extortion in his presence, A has therefore committed robbery.

(c) A meets Z and Z's child, on the high road. A takes the child, and threatens to fling it down a precipice, unless Z delivers his purse. Z in consequence delivers his purse. Here A has extorted the purse from Z, by causing Z to be in fear of instant hurt to the child who is there present. A has therefore committed robbery on Z.

(d) A obtains property from Z by saying—"Your child is in the hands of my gang, and will be put to death unless you send us ten thousand Rupees." This is extortion, and punishable as such; but it is not robbery, unless Z is put in fear of the instant death of his child.

"Is in the presence of." Extortion aggravated by causing fear of instant death, &c. is robbery. The definition requires, and the expression "instant death," &c. implies, the presence of the person who is put in fear. The Explanation and the Illustrations (c) and (d) mark the distinction thus made between the extortion which is robbery and the extortion which is not robbery.

391. When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting, or aiding, is said to commit "Dacoity."

This word "dacoity," (gang robbery) is used in the Bengal and Madras Regulations, and is retained in the Code for the purpose of denoting not only actual gang robbery, but the attempting to rob when such an attempting is made or aided by a gang.

392. Whoever commits robbery shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine; and if the robbery be committed on the highway between sunset and sunrise, the imprisonment may be extended to fourteen years.

Punishment for Robbery.

The definition of the offence in Section 390 shews that robbery is "theft," aggravated by actual violence, by causing fear of instant death, &c. ; or "extortion" aggravated by putting in fear of instant death, &c. The evidence on a prosecution for robbery will be : (1) proof of the same kind as would support a charge of theft or of extortion, (2) proof of the contemporaneous violence or putting in fear. From that part of the definition which explains when theft is robbery, it appears that the proof should be of some violence connected with the act of thieving. Suppose a quarrel and subsequent violent scuffle to take place between two persons in the course of which money or other property belonging to one of them falls on the ground and is picked up and carried away by the other : if the Court thinks the violence, however great, was not used in order to the committing or in committing the theft, or in carrying off the property, there should, it seems, be no conviction for robbery. And it would be the same if the violence was purely accidental, for the definition requires it to be "voluntary." The violence should be proved. If there is a struggle between the offender and the owner for the possession of the property, or if it is snatched away so as to cause "hurt," such thefts would be robberies.

In the absence of violence it should be proved that the extortion was by putting some person in fear of *instant* death, &c. Threats of future injury would not be sufficient.

The putting in fear must, in every robbery, be shewn to be a present fear of instant death, hurt, &c. ; and it must be proved (in extortion amounting to robbery) that the offender is in the presence of the person put in fear either actually or in the sense explained.

If the accused is charged with the aggravated offence of robbery on the highway between sunset and sunrise, it will be necessary to give evidence of the time and place of the robbery. Probably the word "highway" here used should receive the widest signification that it will bear, so as to include any road,

street, path, &c. in public use. Fine may be awarded with the increased term of imprisonment.

393. Whoever attempts to commit robbery shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Attempt to commit robbery.

A present intention to rob combined with an act in execution of such intention which falls short of the offence intended, is an attempt to rob. The attempt should be proved by some act which is a commencement of the execution of the purpose, or which in the judgment of the Court sufficiently manifests the intention of the accused. If the proof should shew not merely an attempt to rob, but that the offence of robbery has been committed, or if it is uncertain whether the offence is robbery or only an attempt to rob, the accused may nevertheless be convicted under this Section.

394. If any person, in committing or in attempting to commit robbery, voluntarily causes hurt, such person and any other person jointly concerned in committing or attempting to commit such robbery, shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall be liable to fine.

Voluntarily causing hurt in committing robbery.

The offence of robbery or of attempting robbery is aggravated by hurt.

The guilty act of one is imputed to all who are joined with him, provided the act is done in committing the offence of robbery. Violence or hurt entirely unconnected with that offence or used to gratify a personal spite or passion is not contemplated; as if one of the robbers should commit murder or rape, while the others are occupied with plundering or searching for property.

To support this charge, there should be proof of the robbery or attempt, and of the hurt: that the hurt was caused voluntarily, that is not accidentally but intentionally or knowingly, may fairly be presumed in the absence of any circumstances to shew that it was accidental.

“Such person and any other person jointly concerned,” &c. See Sections 34, 37, 114 and the notes. These words would appear to include all persons concerned whether as actors or as abettors, unless the word “jointly” confines the provisions to those cases in which the offenders are all joint doers within Section 34.

395. Whoever commits dacoity shall be punished
Punishment for dacoity. with transportation for life,
or with rigorous imprisonment
for a term which may extend to ten years, and shall
also be liable to fine.

It will be borne in mind that this offence as defined does not always involve robbery. The proofs should be of a robbery or attempt to rob by five or more persons who are either joint actors, or some of whom actually commit the robbery, &c., while the others are abettors, being present but not actually participating in the commission of robbery or in the attempt to rob.

396. If any one of five or more persons, who are
Dacoity with murder. conjointly committing dacoity,
commits murder in so committing dacoity, every one of those persons shall be
punished with death, or transportation for life, or
rigorous imprisonment for a term which may extend
to ten years, and shall also be liable to fine.

All present and aiding in the dacoity whether they actually participate in the commission of it, or are only members of the gang ready to act if required, must share in the criminal liability for the murder committed by one or more. Any person who can be proved to have taken such part in the murder as would make him an abettor of the crime may be prose-

cuted and punished under the provisions concerning abetment. It matters not whether he was engaged in dacoity or not. But this Section and Section 394 reach cases in which such abetment cannot be proved, or even may be disproved. But the murder must be in committing the dacoity. If one of the gang should make use of this opportunity to gratify an old grudge, and murder some person at the place where the dacoity is committed, the guilt of his offence would not be imputed to all the others.

397. If, at the time of committing robbery or dacoity, the offender uses any deadly weapon or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years.

Robbery or dacoity with attempt to cause death or grievous hurt.

A minimum punishment not less than seven years, must be imposed on the offender or those of the offenders who use a deadly weapon, whether they actually inflict a wound or not; or who in any way or by any means cause "grievous hurt," at the time of committing a robbery. The Section does not apply to attempts to rob which are accompanied by those aggravating circumstances.

398. If, at the time of attempting to commit robbery or dacoity, the offender is armed with any deadly weapon, the imprisonment with which such offender shall be punished shall not be less than seven years.

Attempt to commit robbery or dacoity when armed with deadly weapon.

To such of the offenders as are armed with deadly weapons, though they do not use them in the attempt to rob or commit dacoity, an imprisonment of not less than seven years must be awarded.

399. Whoever makes any preparation for committing dacoity, shall be punished with rigorous imprisonment

Making preparation to commit dacoity.

for a term which may extend to ten years, and shall also be liable to fine.

“Makes any preparation.” The words point to acts done prior to a commencement of the execution of the guilty purpose, and it may be before any particular dacoity is planned. It will be enough if there is a general design to commit dacoity or to engage in an expedition for this purpose though the plans of the dacoits are not yet matured. The “making preparation” should be shewn to the satisfaction of the Court by some acts—such as the collection of men, arms, provisions, &c.,—which coupled with other circumstances, plainly manifest the intention to commit dacoity.

400. Whoever, at any time after the passing of this Act, shall belong to a gang of persons associated for the purpose of habitually committing dacoity, shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Punishment for belonging to a gang of dacoits. A stringent law (Act XXIV. of 1843) to this effect is now in force. The persons aimed at are those who are habitually associated with gangs of professional dacoits, systematically employed in carrying on their lawless pursuits in different parts of the country (see the Preamble to that Act), accompanying such gangs in their expeditions and actually participating in these operations.

A person who ordinarily lives by honest labor and who on some occasion has been tempted to join himself to a gang and to take a subordinate part in a robbery committed by such gang, cannot properly be designated as belonging to a gang of habitual dacoits. The evidence on a charge under this Section must shew that the accused after the 6th day of October, 1860, belonged to the gang.

401. Whoever, at any time after the passing of this Act, shall belong to any wandering or other gang of

Punishment for belonging to a wandering gang of thieves.

persons associated for the purpose of habitually committing theft or robbery, and not being a gang of thugs or dacoits, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

See the note to the last preceding Section. The various tribes of professional thieves who, under various names, abound in many parts of India, seem to be especially contemplated.

402. **Whoever, at any time after the passing of this**
Assembling for purpose of committing dacoity. **Act, shall be one of five or**
more persons assembled for the
purpose of committing dacoity, shall be punished with
rigorous imprisonment for a term which may extend
to seven years, and shall also be liable to fine.

This unlawful assembly of persons meeting for a common purpose to commit dacoity, are subject to the severe punishment here provided, notwithstanding that the persons assembled may not have proceeded one step towards the accomplishment of their object.

OF CRIMINAL MISAPPROPRIATION OF PROPERTY.

In theft the object of the offender always is to take property which is in the possession of a person out of that person's possession ; and the offence is complete as soon as the offender has moved the property in order to a dishonest taking of it. In the offence of criminal misappropriation, there is not necessarily an invasion of the possession of another person by an attempt to take from him that which he possesses. The offender is already in possession of the property ; and is either lawfully in possession of it, because either he has found it or is a joint owner of it, or his possession, if not strictly lawful, is not punishable as an offence because he has acquired it under some mistaken notion of right in himself or of consent given by another (see the Illustrations to Section 403). The offence con-

sists not in wrongfully obtaining possession, but in the misappropriation, either permanently or for a time, of property which is already without wrong in the possession of the offender.

The dishonest intention to appropriate the property of another is common to theft and to criminal misappropriation. But this intention which in theft is sufficiently manifested by a moving of the property must in the other offence be carried into action by an actual misappropriation or conversion.

403. Whoever dishonestly misappropriates or converts to his own use any moveable property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Illustrations.

(a) A takes property belonging to Z out of Z's possession, in good faith believing, at the time when he takes it, that the property belongs to himself. A is not guilty of theft; but if A after discovering his mistake, dishonestly appropriates the property to his own use, he is guilty of an offence under this Section.

(b) A, being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent. Here, if A was under the impression that he had Z's implied consent to take the book for the purpose of reading it, A has not committed theft. But if A afterwards sells the book for his own benefit, he is guilty of an offence under this Section.

(c) A and B being joint owners of a horse, A takes the horse out of B's possession, intending to use it. Here, as A has a right to use the horse, he does not dishonestly misappropriate it. But if A sells the horse and appropriates the whole proceeds to his own use, he is guilty of an offence under this Section.

If the sheep of A stray from his flock to the flock of B, and B takes them by mistake and drives or leads them along with his own flock, he has committed no offence. But if after discovering his mistake, he dishonestly appropriates them to his own use, as by offering to sell them as his own property, by shearing them and using the wool as his own, &c. he is guilty of an offence under this Section.

If A's house is on fire and B assists in saving some of A's goods and without A's direction takes them home to his own

house, but next morning denies that he has them in his possession, here it may well be that B took the goods with an honest intention meaning only to assist in saving his neighbour's property from the fire, but his subsequent denial of the possession of them, is proof sufficient of a dishonest conversion of the property to his own use.

Explanation 1. A dishonest misappropriation for a time only is a misappropriation within the meaning of this Section.

Illustration.

A finds a Government Promissory note belonging to Z, bearing a blank endorsement. A, knowing that the note belongs to Z, pledges it with a banker as a security for a loan, intending at a future time to restore it to Z. A has committed an offence under this Section.

Or A finds a watch which he knows to belong to B. He dishonestly misappropriates it, if he keeps it, intending not to deprive B wholly of the watch, but to hold it until he obtains money from B as a reward for its restoration.

In criminal misappropriation a dishonest conversion of property to a man's use for a time only is sufficient, as in theft an intention to take dishonestly for a time and afterwards to restore the property is sufficient.

The second Explanation shows under what circumstances a finder of lost property becomes an offender by dealing with it as if it were his own.

The owner of goods is not obliged to keep a constant manual possession of them, to be protected in his rights. A man's goods are in his possession not only while they are in his house or on his premises, but also when they are in a place where he may usually send them, as horses or cattle feeding on common land; or in a place where they may be lawfully deposited by him, as if he chooses to bury money, or gold and silver ornaments in his own land, or to put them in any other secret place of deposit. Such property continues in the possession of the owner. Property may be considered as lost or as "not in the possession of any person" within the following Explanation when it is derelict,

that is, wilfully thrown away or relinquished by the owner ; or when money, ornaments or grain, &c. have been hidden by some owner since dead and the secret of their hiding-place has perished. Property which the owner or possessor knows not where to find, as timber carried away by a flood, stray cattle, a purse dropped on the highway, &c. may also be considered as being no longer in his possession. Property which the owner has not relinquished and which he knows where to find may be so situated that it cannot be said to be possessed by any person, as if a boat-load of goods has sunk in a known place in the bed of a navigable river.

All such property is protected from misappropriation by those who find it by the present Section.

Explanation 2. A person who finds property not in the possession of any other person, and takes such property for the purpose of protecting it for, or of restoring it to, the owner, does not take or misappropriate it dishonestly, and is not guilty of an offence ; but he is guilty of the offence above defined, if he appropriates it to his own use when he knows or has the means of discovering the owner, or before he has used reasonable means to discover and give notice to the owner, and has kept the property a reasonable time to enable the owner to claim it.

What are reasonable means or what is a reasonable time in such a case is a question of fact.

It is not necessary that the finder should know who is the owner of the property, or that any particular person is the owner of it : it is sufficient if, at the time of appropriating it, he does not believe it to be his own property, or in good faith believe that the real owner cannot be found.

Illustrations.

(a) A finds a Rupee on the high road. Not knowing to whom the Rupee belongs, A picks up the Rupee. Here A has not committed the offence defined in this Section.

If a man finds property that has been actually lost, or which is reasonably supposed by him to have been lost, his possession

of such property is lawful, and he commits no offence so long as his purpose is honest, that is, while he takes and keeps the goods to protect and restore them to the true owner. But when he knows that the goods have some owner (whether the particular person who is the owner is known to him or not) and he appropriates the property, he becomes an offender.

(*d*) A sees Z drop his purse with money in it. A picks up the purse with intention of restoring it to Z, but afterwards appropriates it to his own use. A has committed an offence under this Section.

(*e*) A finds a purse with money, not knowing to whom it belongs; he afterwards discovers that it belongs to Z, and appropriates it to his own use. A is guilty of an offence under this Section.

And if he has the means of finding the owner, and he appropriates the property without using those means, he is guilty.

(*b*) A finds a letter on the road, containing a bank note. From the direction and contents of the letter he learns to whom the note belongs. He appropriates the note. He is guilty of an offence under this Section.

(*c*) A finds a cheque payable to bearer. He can form no conjecture as to the person who has lost the cheque. But the name of the person who has drawn the cheque appears. A knows that this person can direct him to the person in whose favor the cheque was drawn. A appropriates the cheque without attempting to discover the owner. He is guilty of an offence under this Section.

When property is merely mislaid, being put down and left by mistake in a house, shop, carriage, &c., under circumstances which will enable the owner to know the place where he has left it, and to which he will naturally return for it; the person who finds the property may reasonably expect to be able to restore it to the owner. A misappropriation, under such circumstances, may justify the Court in convicting the finder of this offence.

It may be that the finder neither knows nor has any such means as we have just supposed of knowing the owner. Even in this case he will be guilty if he converts the property to his own use before he has endeavoured to discover the owner or has waited to enable the owner to claim the property.

(*f*) A finds a valuable ring, not knowing to whom it belongs. A sells it immediately without attempting to discover the owner. A is guilty of an offence under this Section.

It is a question of fact whether he has done what an honest man may reasonably be expected to do before treating the property as his own. It should be ascertained whether he had not reason to believe that the owner could be found. Evidence of his previous acquaintance with the ownership of the particular thing, the place where it is found, or the nature of the marks upon it, will be material. In some cases the ownership would be apparent, in others it would appear only after examination. It may be presumed that the finder would examine the property at the time of the finding.

The finder is not allowed to appropriate the property until he believes, in good faith, after waiting a reasonable time and using reasonable means to discover the owner, that the real owner does not exist or cannot be found, and therefore that the property belongs to himself as the finder. But it seems that a reasonable use of the property in the mean time and before the appearance of the real owner, is not a dishonest conversion of it to the finder's own use, provided he omits no proper means of finding the owner.

404. Whoever dishonestly misappropriates or con-

verts to his own use property, knowing that such property was in the possession of a deceased person at the time of that person's decease, and has not since been in the possession of any person legally entitled to such possession, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine, and if the offender at the time of such person's decease was employed by him as a clerk or servant, the imprisonment may extend to seven years.

Illustration.

Z dies in possession of furniture and money. His servant A, before the money comes into the possession of any person entitled to such possession, dishonestly misappropriates it. A has committed the offence defined in this Section.

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This Section relates to a description of property peculiarly needing protection. The offence consists in the pillaging of moveable property during the interval which elapses between the time when the possessor of the property dies, and the time when it comes into the possession of some person or officer authorized to take charge of it. The proof should be that the property belonged to or was in the possession of the deceased person at the time of his death, and that it has since been misappropriated or converted to his own use by a person who knew or had reason to know that it belonged to the deceased. If there is an executor or a curator appointed, in whom the property has vested and who has taken possession, the offence is theft, not misappropriation.

When the offence is aggravated because it is committed by a clerk or servant, there must be proof that the clerk or servant was in the service at the time of the death.

OF CRIMINAL BREACH OF TRUST.

This offence like the offence of Criminal Misappropriation is characterised by an actual fraudulent appropriation of property. There is not originally a wrongful taking or moving as in theft, but the offence consists in a wrongful appropriation of property, consequent upon a possession which is lawful.

The offence is distinguishable from Criminal Misappropriation, because the subject of it is not property, which by some casualty or otherwise, but without criminal means, comes into the offender's possession ; but property which is entrusted to the offender by the owner or by other lawful authority and which the offender holds subject to some duty or obligation to apply it according to the trust.

Cases of Embezzlement under the English law appear to fall under this head of the Penal Code.

405. Whoever, being in any manner entrusted with property or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property, in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust."

Illustrations.

(a) A, being executor to the will of a deceased person, dishonestly disobeys the law which directs him to divide the effects according to the will, and appropriates them to his own use. A has committed criminal breach of trust.

(b) A is a warehouse keeper. Z, going on a journey, entrusts his furniture to A, under a contract that it shall be returned on payment of a stipulated sum for warehouse room. A dishonestly sells the goods. A has committed criminal breach of trust.

(c) A, residing in Calcutta, is agent for Z, residing at Delhi. There is an express or implied contract between A and Z that all sums remitted by Z to A shall be invested by A according to Z's direction. Z remits a lac of Rupees to A, with directions to A to invest the same in Company's paper. A dishonestly disobeys the directions, and employs the money in his own business. A has committed criminal breach of trust.

(d) But if A, in the last illustration, not dishonestly, but in good faith, believing that it will be more for Z's advantage to hold shares in the Bank of Bengal, disobeys Z's directions, and buys shares in the Bank of Bengal for Z, instead of buying Company's paper, here, though Z should suffer loss, and should be entitled to bring a civil action against A on account of that loss, yet A, not having acted dishonestly, has not committed criminal breach of trust.

(e) A, a revenue officer, is entrusted with public money, and is either directed by law, or bound by a contract, express or implied, with the Government, to pay into a certain treasury all the public money which he holds. A dishonestly appropriates the money. A has committed criminal breach of trust.

(f) A, a carrier, is entrusted by Z with property to be carried by land or by water. A dishonestly misappropriates the property. A has committed criminal breach of trust.

The offence, as here defined, appears to include any dishonest misappropriation by persons in whom confidence is placed as to the custody or application of particular property whether it be by legal authority or private contract or consent. Persons who

as clerks, agents, servants or otherwise, under whatsoever name, have a confidence reposed in them by their employers and are, whether in the ordinary course of their employment or only occasionally, entrusted with property, and persons whose employment does not extend beyond the particular occasion on which they are so entrusted, seem to be within the Section. Those who are called, technically, trustees, if they commit a breach of trust, are responsible as criminals for acts done by them dishonestly for their own gain to the despoiling of the persons for whom they are in trust, or for acts causing wrongful gain to themselves or wrongful loss to such persons. The following Sections (407—409) make special provisions for various cases in which property is entrusted to agents or contractors who commit this offence.

The definition includes those who are entrusted in any manner with property, as warehouse-keepers, &c. who are entrusted only with the possession or custody of property. Persons who are empowered to take or deliver possession of property whether such power is derived from the owner or from any other person, and persons who are entrusted with any dominion over property are also included. Property which is bulky or which cannot, for other reasons, be delivered from hand to hand, is usually represented by some writing or other thing. Thus the key of the warehouse or place where goods are lodged, the bill of lading, delivery order, or other document however called, which is used in the ordinary course of business to show the possession or control of property and which enables the holder to transfer or receive or otherwise deal with it, are made to represent the property itself. A person entrusted with such a document or thing has a dominion over the property thereby represented.

A dishonest misappropriation or conversion is essential to this offence. Negligence or other misconduct causing the loss of the entrusted property may make the person entrusted civilly responsible, but will not make him guilty of this offence. There

must be the intention to cause wrongful gain or wrongful loss to constitute a criminal breach of trust.

A person in charge of a carriage or boat which plies for hire, or of a mill, or machine, &c. who uses the property entrusted to him for his own gain, dishonestly misappropriating the money which he receives for such use, is within this Section.

“ Or wilfully suffers any other persons, &c.” Trustees or others having charge of property are not criminally answerable for the acts of agents employed by them in relation to such property, but if they knowingly suffer their agents to deal dishonestly with the property, they commit criminal breach of trust.

406. Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

The evidence in support of a charge of criminal breach of trust must show, (1) that the accused person was, in some manner, entrusted with the property or with a dominion over it. The offence consists in the betrayal of some trust or confidence reposed in the offender. Dealings concerning property between independent persons in the course of which debts or claims by one against the other arise are not the subject of this offence. There can be no criminal misappropriation unless some trust or confidence exists. (2) It must be proved that the accused has dishonestly misappropriated or disposed of the property in violation of his duty. As to the proof of the criminal misappropriation in cases where money has been misappropriated, it will often be of the following kind : either the offender has wilfully made false entries in his books or else he has denied or wilfully omitted to acknowledge the receipt of the money. A person who keeps true accounts, or otherwise duly acknowledges the receipt of money, cannot ordinarily be supposed to intend to commit a criminal breach of trust. On the other hand the mere fact of

his making an entry in the books of account will not protect him. The fact of not paying over money or not accounting for it, will not probably of itself be thought sufficient to justify a conviction, even though the accused person sets up a frivolous excuse or advances a claim wholly unfounded. But the absconding of the accused, coupled with a refusal to account or a false account, furnishes strong evidence of a criminal misappropriation of the money.

If the evidence in support of the charge leaves it doubtful whether the offence which has been committed is theft or criminal breach of trust, the Court may nevertheless proceed to judgment and award punishment (see Section 72).

407. Whoever being entrusted with property as
Criminal breach of trust by a carrier, wharfinger, &c. a carrier, wharfinger, or warehouse-keeper commits criminal breach of trust in respect of such property shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine.

Those who receive property under a contract express or implied to carry it or to keep it in safe custody are by this Section made punishable for a criminal breach of duty with respect to such property. Carriers by water who run their boats or vessels ashore, intending to misappropriate the cargo, are punished by a subsequent Section. (See Section 439.)

408. Whoever, being a clerk or servant or employed as a clerk or servant
Criminal breach of trust by a clerk or servant. and being in any manner entrusted in such capacity with property or with any dominion over property, commits criminal breach of trust in respect of that property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

A clerk or servant who takes his master's property is punishable for theft. (See Section 381.) The present provision seems

to apply to cases in which there is some special trust, as where the clerk or servant is entrusted with his master's property that he may sell or dispose of it, or where he is appointed to collect money and to pay it over to his employer, &c. The criminal misappropriation by such person of the particular property entrusted to him, is an offence here made punishable in the same manner as the taking of his master's property by a servant when the property taken is not in his possession or charge in the line of his service or employment, as the theft by a menial servant of money or other property from his master's house. Confidential persons such as are employed by bankers in the Mofussil to convey remittances in specie, who appropriate the money to their own use (alleging that it has been taken from them by robbers) would, it seems, be punishable under this or the last preceding Section.

409. Whoever, being in any manner entrusted with property, or with any dominion over property, in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney, or agent, commits criminal breach of trust in respect of that property, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

The criminal breach of trust which is here punished is committed only when the banker, merchant, &c. is entrusted in the way of his business with property or with documents which give him a dominion over property, and not otherwise. It seems that the property must be entrusted to him in such manner that he becomes subject, by contract, express or implied, or by force of law, to a certain duty in regard to it. (See Illustration (c) of Section 405.) A factor or agent who sells the goods of his employer and receives the money on his behalf, if he commits a criminal breach of trust by dishonestly appropriat-

ing his principal's money, will be punishable under this Section. But the relation between a banker and his customer is not necessarily of the same fiduciary kind. The money which the customer places in the banker's custody becomes the banker's money; he may employ it as he pleases and he commits no breach of trust even if he puts it in jeopardy; only he is of course answerable for the repayment of the amount which he has received. It seems that a banker would be criminally liable under the present Section only in case he undertook some particular duty (in the way of his business) in relation to the property entrusted to him; as if he received Government Paper or other Securities into his custody, undertaking to keep them safely, and to receive the interest, &c.

OF THE RECEIVING OF STOLEN PROPERTY.

The receiver of stolen property though not strictly a participator in the offence by which the property has been acquired, facilitates the commission of that offence or at least renders its detection more difficult, by aiding the thief in the disposal of the property. But the Code does not treat the receiver as an accessory or abettor, or as an offender against public justice. It makes the offence of receiving stolen property a substantive offence, and punishes the receiver, not always as it punishes the principal offender, but with a punishment more or less severe according to circumstances.

410. Property the possession whereof has been transferred by theft, or by
 Stolen property. extortion, or by robbery, and
 property which has been criminally misappropriated, or in respect of which the offence of criminal breach of trust has been committed, is designated as "stolen property." But if such property subsequently comes into the possession of a person legally entitled to the possession thereof, it then ceases to be stolen property.

An extended signification is given to the words "stolen property," which are used in the four subsequent Sections. Not only things which have been stolen, extorted or robbed, but also things which have been obtained by criminal misappropriation or criminal breach of trust are within the meaning here assigned to these words.

"But if such property subsequently comes, &c." The rules of the civil law applicable to the transfer and acquisition of moveable property, must be consulted to ascertain when "stolen property" ceases to be so, by reason of its coming "into the possession of a person legally entitled to the possession thereof."

Suppose goods are found by the owner in the pockets of a thief or on his person, and the owner takes the goods again into his possession, but afterwards, for the purpose of detecting the receiver, gives them back to the thief desiring him to sell them as he had sold other stolen property. These goods having ceased to be "stolen property," the person who receives or buys them from the thief, however guilty, is not a receiver of such property.

411. Whoever dishonestly receives or retains
Dishonestly receiving stolen property. any stolen property, knowing or having reason to believe the same to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

There must be a taking into his possession of the "stolen property" by the receiver; but a manual possession or a touching of the property is not essential to constitute a receipt of it. If the stolen property has come under the control of the receiver, as, if it is in the hands of a person whom he can command in respect to it, he has received it. If the "stolen property" has been brought without permission to the house of a person who retains it after he becomes aware that it has been stolen, he will be punishable under this Section.

The receiver should know or have reason to believe the goods to be stolen, but it is immaterial whether or not he knows who stole them. The offence made punishable is not the receiving stolen property from any particular person, but the receiving such property knowing it to be stolen. The receiver must have a dishonest intention; but whether he takes the goods for some purpose of profit or gain to himself, or merely to assist the thief, or in order to conceal them, his taking cannot but be intended to cause wrongful gain or wrongful loss, and is therefore dishonest. (See Section 24.)

To support a charge of receiving stolen property, the prosecutor must prove, 1st, that the property is "stolen property," that is, that it comes within the definition in Section 410, having been obtained by some one of the offences there mentioned; 2nd, the receiving or retaining of the property by the accused person; 3rd the guilty knowledge of the accused. His dishonest purpose may be inferred if the above matters are satisfactorily proved and left unexplained. As to the proof of the receiver's guilty knowledge, from the caution necessary in this sort of traffic, it must often happen that no express disclosure is made to him, and yet that he knows the property to have been stolen as well as if he had actually witnessed the theft. In this, as in other cases, it is sufficient if circumstances are proved which, to persons of ordinary understanding in the situation of the accused person, must have led to the conclusion that the property was stolen or otherwise dishonestly acquired. Thus, if it is shown, that the accused received large quantities of money, ornaments, bundles of clothes of various kinds or moveables of any sort from persons destitute of property and without any apparent lawful means of acquiring it, and especially if it is proved that the property was brought at untimely hours and under circumstances of evident concealment, it may well be concluded that it was received with a full understanding of the guilty mode by which it has been acquired. And this will be still further confirmed, if it appears that the property was purchased for a sum far below its real value, or was concealed in

places not usually employed for keeping such property, or if the marks on it are effaced, or if false or inconsistent stories are told as to the mode of its acquisition. Another circumstance from which such guilty knowledge may be inferred is, that the property has been received from a notorious thief or one from whom stolen property has, on previous occasions, been received.

If stolen property is found soon after the theft in the possession of a person who cannot give a reasonable account of the way by which he became possessed of it, it is fair to presume that he is himself the thief. If the evidence leaves it doubtful whether the accused is guilty of theft or of receiving stolen property, he may be adjudged guilty and punished under the 72nd Section.

The presumption arising from the possession of stolen property is one which is strengthened, weakened or rebutted by concomitant circumstances, such as the length of time elapsing, vicinity to the spot, nature of the property, and the behaviour of the accused.*

As to the punishment there will be many degrees of criminality among this class of offenders. Within the limits here mentioned, which range from rigorous imprisonment for three years to fine, the Courts may award a punishment proportioned to the offence of the receiver, and his complicity in the principal offence by which the stolen property has been acquired.

412. Whoever dishonestly receives or retains any stolen property, the possession whereof he knows or has reason to believe to have been transferred by the commission of dacoity, or dishonestly re-

Dishonestly receiving property stolen in the commission of a dacoity.

* Lord Hale, after observing that "presumptive evidence must be very warily pressed," writes, "If a horse be stolen from A, and the same day, B be found riding upon him, it is a strong presumption that B stole him; yet I do remember that before a very learned and wary judge, in such an instance, B was condemned and executed at Oxford Assizes, and yet, within two Assizes after, C being apprehended for another robbery and convicted, upon his judgment and execution confessed that he was the man that stole the horse, and, being closely pursued, desired B a stranger to walk his horse for him while he turned aside on a necessary occasion, and thus escaped; and B was apprehended with the horse, and died innocently."

ceives from a person, whom he knows or has reason to believe to belong or to have belonged to a gang of dacoits, property which he knows or has reason to believe to have been stolen, shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

For one description of cases of receiving stolen property, namely, the cases in which property is known by the receiver to have been acquired by the offence of dacoity or is received from a dacoit, it was thought fit especially to provide a heavier punishment. The receiver, in these cases, may be punished as severely as those who commit dacoity.

413. **Whoever habitually receives or deals in property which he knows or has reason to believe to be stolen property, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.**

Habitually dealing in stolen property.

See the notes to Section 411.

The common receiver or professional dealer in stolen property, is hereby made punishable.

414. **Whoever voluntarily assists in concealing or disposing of or making away with property which he knows or has reason to believe to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.**

Assisting in concealment of stolen property.

Those whose dealing with the stolen property is not of such a kind as to make them guilty of dishonestly receiving or retaining it, may be punished under this Section. Assistance given by aiding the concealment or destruction, or by promot-

ing the sale, of the stolen property, if it is given “voluntarily” (see Section 29), by a person who knows or has reason to believe that the property is stolen, constitutes the offence.

OF CHEATING.

The provisions for the proper punishment of some of the aggravated forms of cheating are contained in other Chapters of the Code than the present one (of Offences against Property) wherein cheating is defined, viz. in the Chapters of Offences relating to the Coin, to Weights and Measures, to Documents and to Trade or Property Marks.

The practising of intentional deceit for purposes of gain or to induce a person to act in such a way as to cause damage or harm to himself is an offence made punishable by the Code under this head.

It is important that the law should in no case encourage deceit or falsehood, and that it should impose restraints on those who practice deception. But the legislator cannot go so far as to establish the rule of morality as a part of the rule of law. Many false pretences and many representations calculated and intended to mislead are morally wrong and deserving of punishment; but a Penal Code cannot adopt so severe a standard as the moral law whereby to measure the conduct of men. It is by public opinion, the opinion of the great body of the people, that restraints and punishments must, in such cases, be imposed. “It would be highly inexpedient to punish as a criminal every dependent who obtains pecuniary favours by false professions of attachment to a patron, every legacy-hunter who obtains a bequest by cajoling a rich testator, every debtor who moves the compassion of his creditors by overcharged pictures of his misery, every petitioner who, in his appeals to the charitable, represents his distresses as wholly unmerited, when he knows that he has brought them on himself by intemperance and profusion.”

In dealings between buyers and sellers, frequently even in tolerably honest transactions, there happens an exaggeration on the one side and a depreciation on the other of the value of the thing sold which may be morally reprehensible, but with which the penal law cannot deal. "If all the misrepresentations and exaggerations, in which men indulge for the purpose of gaining at the expense of others, were made crimes, not a day would pass in which many thousands of buyers and sellers would not incur the penalties of the law. It happens hourly that an article which is worth ten rupees is affirmed by the seller to be cheap at twelve rupees, and by the buyer to be dear at eight rupees. The seller comes down to eleven rupees, and declares that to be his last word. The buyer rises to nine, and says that he will go no higher. The seller falsely pretends that the article is unusually good of its kind, the buyer that it is unusually bad of its kind; the seller that the price is likely soon to rise, the buyer that it is likely soon to fall. Here we have deceptions practised for the sake of gain, yet no judicious legislator would punish these deceptions. A very large part of the ordinary business of life is conducted all over the world, and nowhere more than in India, by means of a conflict of skill, in the course of which, deception to a certain extent perpetually takes place. The moralist may regret this: but the legislator sees that the result of the attempts of the buyer and seller to gain an unfair advantage over each other is that in the vast majority of cases, articles are sold for the prices which it is desirable that they should fetch; and therefore he does not think it necessary to interfere. It is enough for him to know that all this great mass of falsehood practically produces the same effect which would be produced by truth; and that any law directed against such falsehood would, in all probability, be a dead letter, and would, if carried into rigorous execution, do more mischief in a month than all the lies which are told in the making of bargains throughout all the bazars of India produce in a century."

One probable result of such a law would be that every sale

of goods where the buyer made default in payment and every loan of money where the borrower made default, would become the subject of a criminal prosecution by the disappointed creditor.

415. Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived and which act or omission causes or is likely to cause damage or harm to that person, in body, mind, reputation, or property, is said to "cheat."

Explanation. A dishonest concealment of facts is a deception within the meaning of this Section.

"Whoever by deceiving any person, &c." The deception may be by false pretences concerning existing or past events, or by using false tokens or symbols, or by false promises as to the future; but when the deception is prospective, relating to something which the person deceived is led to expect will be done, the offence appears to turn upon its being the present intention of the offender not to do what he deceitfully leads the other person to expect he will do. In the Illustrations, several modes of deception are mentioned. But the modes of deception are endless and these Illustrations do not of course pretend to exhaust the ways in which a person may cheat, that is, may do acts coming within the definition of cheating.

(a) A, by falsely pretending to be in the Civil Service, intentionally deceives Z, and thus dishonestly induces Z to let him have on credit goods for which he does not mean to pay. A cheats.

Or the misrepresentation may be concerning A's business, situation, or standing in life. What is advanced merely as a matter of opinion and without intention to deceive cannot amount to a deception within this Section.

The pretence, &c., need not be by words but may be sufficiently gathered from the acts and conduct of the party, as if a person assumes a particular dress, as a soldier's uniform, or carries a token or badge as an office peon, or puts a counterfeit mark on an article as in the next Illustration.

And according to the Explanation, a dishonest concealment of facts is a deception.

Actions or conversations occurring at different times may be connected together. What was done or said on any one occasion may not be sufficient to amount to a deception ; but the Court will consider whether the different conversations or acts are not so connected as to constitute one continuing transaction.

Whatever may be the particular mode of deception employed, the misrepresentation must operate on the mind of the person deceived, either alone or with other causes, as an inducement to deliver or to consent that another person shall retain property, &c. If he is induced to deliver property or money not by the deceit attempted to be practised on him but by other motives, there is no deception within the meaning of the definition—as if a person advances money on the security of a chain pledged to him, relying not upon a representation falsely made to him by the depositor that it was silver, but on his own examination and test of the chain. Nor is there such deception if the person parts with his property in pursuance of a plan laid to entrap the deceiver in the commission of his offence.

But when there is deception, it matters not how shallow may be the device employed if the sufferer is in fact deceived. It is not necessary that he should have reasons of weight or any valid reason for believing the false promises or chimerical hopes held out to him. The law is not only for the protection of the strong and the prudent. It grants no license to the cunning man to deceive the simple. “ A weak and credulous person is more easily imposed on than a judicious and discerning person. And just so an infant is poisoned with a dose of laudanum which would hardly put a grown up person to sleep ; yet the prisoner is a murderer : a pregnant woman is grievously hurt by

a blow which would make no impression on a boxer: yet the person who gives such a blow is punished with exemplary severity. The law, in such cases, enquires only whether the harm has been voluntarily caused, or no. And why should the violation by deceit of the right of property be treated differently? The deceiver proportions his artifices to the mental strength of those whom he has to deal with, just as the poisoner proportions his drugs to their bodily strength. And there can be no more reason for exempting the deceiver from punishment, because he has effected his purpose by a gross fiction, which could have duped only a weak person, than for exempting the poisoner from punishment because he has effected his purpose with a few drops of laudanum which could have been fatal only to a young child."

"Fraudulently or dishonestly induces the person so deceived to deliver any property, &c." Cheats in the course of commercial and other dealings concerning buying and selling come under this clause of the definition. The two Illustrations are cases of deception: the first by the vendor on the purchaser, the second by the purchaser on the vendor.

(c) A, by exhibiting to Z a false sample of an article, intentionally deceives Z into believing that the article corresponds with the sample, and thereby dishonestly induces Z to buy and pay for the article. A cheats.

(d) A, by tendering in payment for an article a bill on a house with which A keeps no money and by which A expects that the bill will be dishonored, intentionally deceives Z, and thereby dishonestly induces Z to deliver the article, intending not to pay for it. A cheats.

Cases like the one mentioned in the first of these Illustrations in which a man puts off upon another a counterfeit article which he knows is not truly the article intended to be purchased are cheats. In such cases the seller gets the buyer's money in exchange for a specific thing shewn to him, that thing being apparently what he meant to buy, but in reality a totally different thing. The deception may be by exhibiting a false sample or by any other deceitful means—as by representing an article sold to be silver when it is not—by

representing on a sale of horses that they lately belonged to a lady deceased and are quiet and fit for a lady to drive, when in fact they are the property of a horse dealer, and have lately run away and produced a fatal accident, &c.

But such cases are distinguishable from those in which there is a real sale and where in the course of bargaining for a specific thing, the seller praises and exaggerates, or the buyer depreciates the description and quality of the thing to be sold. A person who merely gets a worse bargain than he expected, cannot on this account charge him with whom he deals with cheating. No specific property is lost or gained in such a case on either side. The buyer obtains, if not the precise thing he meant to buy, yet something very nearly like it. He receives a substantial *quid pro quo*. What he really loses is the difference in value between the thing sold as it is, and what it would have been worth if all the seller's commendation of it were true.

It is difficult to draw the line between such intentional deception in the substance of a contract as amounts to cheating and that exaggeration or false praise of an article in respect of a matter of opinion which the penal law allows to go unpunished. But it is of great public importance that a mere breach of warranty on the sale of goods, representations by a seller that an article is better in point of quality than it really is or that it is as good as similar articles made by another maker, mere vaunting or puffing by a seller &c. should be treated, not as offences within the Penal Code, but as matters which, if they cause damage, may be remedied by Civil suit.

A deception which relates to the quantity of the goods delivered, as if a person pretends that he has delivered the entire quantity of grain &c. which has been purchased when he knows that this is false, and that only a portion has been delivered, is within the Section. So also if a man pretends that he has performed work which he has not performed, as in the case supposed in the Illustration (h).

And it is a fraudulent deception to obtain property by professing untruly to have funds with a banker or agent &c. and drawing and delivering in payment of goods a cheque which the offender knows will not be paid. (See Illustration (a)).

Passing off ornaments of paste for diamonds whether by way of sale or as a pledge is a deception, like those already mentioned, in which there is a false representation as to the substance of the article for sale and a counterfeit is passed off as and for the genuine substance.

(e) A, by pledging as diamonds articles which he knows are not diamonds, intentionally deceives Z, and thereby dishonestly induces Z to lend money. A cheats.

A not uncommon kind of deception is where one represents himself or his firm to be in a sound pecuniary condition or worth so much money, knowing that this is untrue ; or falsely pretends to have particular property in his own hands, or in the hands of another person whereby he gains credit. A delivery of goods or a loan of money procured by intentional deception by a person who has no intention of paying, is a cheat.

(f) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him, and thereby dishonestly induces Z to lend him money, A not intending to repay it. A cheats.

A man is guilty of cheating who, by false representations obtains an advance of money, not meaning to perform the service or to deliver the article for which the advance is given ; or who by falsely pretending to have performed work for which he was hired, obtains pay to which he is not entitled.

(g) A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo plant which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery. A cheats ; but if A, at the time of obtaining the money, intends to deliver the indigo plant, and afterwards breaks his contract and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract.

(h) A intentionally deceives Z into a belief that A has performed A's part of a contract made with Z, which he has not performed and thereby dishonestly induces Z to pay money. A cheats.

(i) A sells and conveys an estate to B. A, knowing that in consequence of such sale he has no right to the property, sells or mortgages the same to Z without disclosing the fact of the previous sale and conveyance to B, and receives the purchase or mortgage money from Z. A cheats.

The Indian Law Commissioners observe—"We cannot see why such acts as these should be treated as mere civil injuries,—why they should be classed with the mere non-payment of a debt, and the mere non-performance of a contract. They are infractions of a legal right effected by deliberate dishonesty. They are more pernicious than most of the acts which will be punishable under our Code. They indicate more depravity, more want of principle, more want of shame than most of the acts which will be punishable under our Code. We punish the man who gives another an angry push. We punish the man who locks another up for a morning. We punish the man who merely threatens another with outrage. And surely the man who, by premeditated deceit, enriches himself to the wrongful loss, perhaps to the utter ruin, of another, is not less deserving of punishment."

"Or to consent that any person shall retain any property." It is equally a cheat whether the deception causes a person fraudulently or dishonestly to acquire property by delivery, or to retain property already in his possession. If a man to whom property is lent or who is entrusted for a time with the charge of it deceives the owner and thereby induces him for some purpose of wrongful gain to the borrower or wrongful loss to the owner to allow the property to be retained in the borrower's possession, this amounts to cheating within the definition here given.

"Any property"—These words which occur in the first two clauses of the definition include any thing which by the Civil law is the subject of property and which admits of being delivered. It seems that only moveable property is intended. Where the cheating concerns a valuable security it will be observed that it is punished more severely.

“ Or intentionally induces the person so deceived to do or omit to do any thing which &c.”

In the former clauses of the definition, the deception is for some purpose of wrongful gain, or in order to cause wrongful loss or to defraud. By this last clause intentional deceptions are made punishable as cheats, if they cause or are likely to cause any damage or harm, whether to property or to reputation. It is sufficient to constitute cheating within this clause if the deception is intended to cause any damage or harm whatsoever to the person deceived. Damage or harm occasioned by any thing which the law deems an injury (see Section 44) is not here necessary.

Suppose a person is induced by false representations as to the nature and extent of a business to enter into partnership with another and to advance money or to incur liabilities on account of the partnership, the person who thus misleads him, whether that person is the partner or a third person, if he intends by his deception to cause damage to the person deceived is, it seems, guilty of cheating. So if a man is induced by deception to buy shares in a Company or Government Securities at a price above the fair market price, the person who thus deceives him cheats, although he may not be the seller of or interested in the shares. But in all cases within this part of the definition, the deception must be intended not only to induce the person deceived to do or omit to do something, but also to cause damage to that person. False statements are often made incautiously or carelessly or without sufficient information or inquiry and without any intention to deceive or injure. It may be observed of all incorrect or deceptive statements that they are not deceptions within this Section, unless the person making them intends to induce the person to whom they are made to act upon the strength of such statements : even then they are not deceptions within the definition unless the person who does or omits &c. is induced to act by such statements and not by other independent motives : and lastly

(b) A cheats by pretending to be B, a person who is deceased. A cheats by personation.

The former Section defines cheating; this Section employs the defined word, assuming both in its text and its Illustrations that the meaning of that word has already been fixed. Whoever does that which has been defined as cheating, and does it by the false pretence which is here described commits the offence of cheating by personation. The cheat mentioned in the first Illustration in the preceding Section, is a cheat effected by personation. Where there is cheating and it is effected by any of the following deceptions, the offence will, it seems, amount to cheating by personation.

First, by pretending to be some other person:—as if A pretends to be a certain rich banker of the same name. Second, by taking a name not his own:—as if A pretends to be B, a person who is deceased. Third, by taking any title or addition to which he has not a right:—as if A takes the title of Rajah having no right to that title. Fourth, by pretending to be of a country of which he is not:—as if A, an East Indian, pretends to be an Afghan. Fifth, by pretending to be of a calling of which he is not:—as if A falsely pretends to be a Clergyman. Sixth, by pretending to be of a family of which he is not:—as if A pretends to be a member of one of the Sovereign Houses of India. Seventh, by falsely pretending to hold or to have held any office, real or imaginary. Eighth, by falsely pretending to be related by blood or marriage to any person, real or imaginary:—as if A falsely pretends to be married to B an heiress. Ninth, by falsely pretending to be in the employ of any person, real or imaginary:—as if A falsely pretends to be the agent of a great commercial house in Europe, or to be the Vakeel of a native prince, &c.

There may be personation without any false pretence made in words.

417. Whoever cheats shall be punished with imprisonment of either descrip-

Punishment for cheating.

tion for a term which may extend to one year, or with fine, or with both.

418. Whoever cheats with the knowledge that he is likely thereby to cause wrongful loss to a person whose interest in the transaction to which the cheating relates he was bound, either by law, or by a legal contract, to protect, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Cheating with knowledge that wrongful loss may be thereby caused to a person whose interest the offender is bound to protect.

The aggravated form of cheating which is punished by this Section is committed when the person who cheats stands in some relation of trust or confidence to the person cheated, either as his clerk, servant, or agent generally, or as a person employed on a particular occasion only, as a broker employed to buy or sell certain goods, an auctioneer employed to sell property, &c. Whoever undertakes to act as the agent of another person, whatever may be the nature of the agency, is bound by law to protect within the scope of such agency his employer's interests. Cheats by persons like those who are punished when their offence amounts to a criminal breach of trust by Sections 407, 408 and 409 appear to be within this Section.

The deception must be not only intentional, but also with the knowledge that it is likely to cause "wrongful loss" (see Section 23).

419. Whoever cheats by personation shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Punishment for cheating by personation.

420. Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter, or destroy the whole or any part of

Cheating and dishonestly inducing a delivery of property.

a valuable security, or any thing which is signed or sealed and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

An increased punishment may be awarded where the cheating causes any property to be delivered "dishonestly," that is where it is of the kind which the first clause of the definition in Section 415 describes; where it causes a valuable security (see Section 30) as a title-deed, bond, bill of exchange, receipt, &c., to be made, altered or destroyed; or where it causes such a document as a deed, bond, bill of exchange, receipt, &c., which has been prepared, but which still continues in the hands of the person who will be bound thereby, and has not yet taken effect or come into operation—to be made (that is completed and brought into force by delivery, &c.), altered, or destroyed.

OF FRAUDULENT DEEDS AND DISPOSITIONS OF PROPERTY.

The object of the provisions under this head appears to be the punishment of dishonest and fraudulent debtors. The Civil law fixes the relative rights of debtors and creditors, and assigns to the latter remedies for the recovery of their just demands. It also provides for the distribution of a debtor's property among his creditors if he becomes insolvent and is unable to satisfy their claims in full.

But if a person endeavours to evade his just liabilities by a fraudulent disposal of his property, he is treated as a criminal. We have seen that in the Chapter of Offences against Public Justice, there are some provisions (Sections 206—208) for the punishment of those who attempt by fraud to defeat a judgment-creditor by obstructing the execution of his decree. The following Sections seem to be intended to protect the general

body of creditors from such fraudulent dealings and dispositions of his property (whether by deeds or writings or otherwise) by the debtor as prevent or are likely to prevent the fair distribution of his property according to law.

The law relating to Insolvent Debtors in India (11 Vic. ch. 21) contains clauses for the punishment of an Insolvent who fraudulently makes away with or conceals his property with the intention of diminishing the fund to be divided amongst his creditors, or of giving an undue preference to some of his creditors (Sections 50. 70). It also punishes the fraudulent destruction or falsifying of his books and papers. That Statute, which remains unaffected by the Penal Code, applies only within the jurisdiction of the Supreme Courts. By the Civil Procedure Code (Act VIII. of 1859) a person imprisoned may obtain his discharge on surrendering the whole of his property for the benefit of his creditors (see Sections 280—282). This law also contains a provision for the punishment of a fraudulent concealment or transfer of his property by the debtor.

Frauds of the kind which are made punishable by the following Sections may be dealt with in cases to which the Act of Parliament does not apply under this Code. Such offences as the fraudulent falsifying of books, &c., may come within the provisions concerning the fabricating of false evidence, and the withholding and the fraudulent destroying of such books, under Sections 175 and 204. See also the definition of "mischief" (Section 425), and Section 477.

421. Whoever dishonestly or fraudulently removes, conceals, or delivers to any person, or transfers, or causes to be transferred to any person, without adequate consideration, any property, intending thereby to prevent, or knowing it to be likely that he will thereby prevent, the distribution of that property according to law among his creditors or the creditors of any other person, shall be punished with

Removal or concealment of property to prevent distribution among creditors.

imprisonment of either description for a term which may extend to two years, or with fine, or with both.

422. Whoever dishonestly or fraudulently prevents

Dishonestly preventing from being made available for his creditors a debt or demand due to the offender.

any debt or demand due to himself or to any other person from being made available according to law for payment of his debts

or the debts of such other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

423. Whoever dishonestly or fraudulently signs,

Dishonest execution of deed of transfer containing a false statement of consideration.

executes, or becomes a party to any deed or instrument which purports to transfer or subject

to any charge, any property or any interest therein, and which contains any false statement relating to the consideration for such transfer or charge or relating to the person or persons for whose use or benefit it is really intended to operate, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

424. Whoever dishonestly or fraudulently conceals

Dishonest removal or concealment of property.

or removes any property of himself or any other person, or dishonestly or fraudulently

assists in the concealment or removal thereof, or dishonestly releases any demand or claim to which he is entitled, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

OF MISCHIEF.

In the offences against property which have hitherto been considered, the purpose of the offender ordinarily is, to cause a wrongful gain of property: there is a transfer of the property which is the subject of the offence from the rightful possessor

to the offender or to some other person, or there is an appropriation or conversion of it by the offender. In the offence of mischief, there is not necessarily any transfer of property or any wrongful gain to the offender. The property continues with the possessor (unless the mischief extends to its absolute destruction,) but it does not continue in his possession without change or diminution in value. Some injury has been sustained by it, and this injury, if it is intentionally caused, constitutes mischief. This offence is commonly perpetrated from vindictive motives; but absence of spite will be no answer to a charge of mischief, nor is it essential that any motive for the mischievous acts should be assigned, if the intention to cause wrongful loss is shown.

425. Whoever, with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility or affects it injuriously, commits "mischief."

Mischief.

Illustrations.

(a) A voluntarily burns a valuable security belonging to Z, intending to cause wrongful loss to Z. A has committed mischief.

(b) A introduces water into an ice house belonging to Z, and thus causes the ice to melt, intending wrongful loss to Z. A has committed mischief.

(c) A voluntarily throws into a river a ring belonging to Z, with the intention of thereby causing damage to Z. A has committed mischief.

(h) A causes cattle to enter upon a field belonging to Z, intending to cause, and knowing that he is likely to cause, damage to Z's crop. A has committed mischief.

All kinds of property, whether moveable or immoveable, may be the subject of this offence. Some change or diminution in value or utility must be caused to the property. Such damage should be of a nature serious enough to be worthy of notice. If it is slight and trivial the General Exception contained in the 95th Section may be applicable.

The intention to cause some wrongful loss (See Section 23) or damage to the property is essential. An act which harms or lessens the value of property, if it is done by accident or mistake and not wilfully, does not make the doer an offender under the Penal Code, although he may be answerable in a civil suit for such damage. The wrongful loss may be to any person or to the public, or to any class of the public or any community, as the inhabitants of a particular village (see Section 12). Where the act which causes damage is done without any criminal intention to cause harm, and in good faith for the purpose of preventing or avoiding other harm to person or property, the doer commits no offence (see Section 81). If A in a storm throws overboard property of Z, in spite of Z's prohibition, but intending in good faith to save the lives of the crew or to save property of greater value than that which is thrown overboard; here A has not committed mischief.

Explanation 1. It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured, or destroyed. It is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss or damage to any person by injuring any property, whether it belongs to that person or not.

(e) A, having insured a ship, voluntarily causes the same to be cast away, with the intention of causing damage to the under-writers. A has committed mischief.

(f) A causes a ship to be cast away, intending thereby to cause damage to Z who has lent money on bottomry on the ship. A has committed mischief.

A knowing that B's house is fully insured, burns it. Here A may not cause or intend to cause loss to B, but if he knows that he is likely to cause wrongful loss to the insurers of B's house, he has committed mischief.

Explanation 2. Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that person and others jointly.

(d) A, knowing that his effects are about to be taken in execution in order to satisfy a debt due from him to Z, destroys those effects, with the intention of thereby preventing Z from obtaining satisfaction of the debt, and of thus causing damage to Z. A has committed mischief.

(g) A, having joint property with Z in a horse, shoots the horse, intending thereby to cause wrongful loss to Z. A has committed mischief.

These Illustrations shew that a man may commit mischief on his own property. In order, however, to his doing so, it is necessary that he intend to cause wrongful loss to some person, as in the cases stated in the Illustrations. If a person destroyed a duplicate specimen (his own property) of some rare coin, painting, or other object to enhance the value of the remaining one, such an act would not be done with the intention of thereby causing wrongful loss to any person. Suppose A has received an advance of money from Z on a representation made by A that he will cultivate a particular crop or plant on his land and deliver it when ripe to Z, here if A after cultivating the crop causes it to be destroyed, intending thereby to cause loss to Z, his act is perhaps not punishable as an offence within the definition of mischief, because the loss thus caused is not "wrongful loss" in the sense which those words bear in the Code (see Section 23).

426. Whoever commits mischief shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

There must be proof of the destruction or damage to property. The criminal intention may be inferred from the destruction unless the accused person shows that he acted by mistake or accident, &c.

The amount and nature of the loss sustained is referred to in the subsequent Sections in laying down the punishment for different degrees of the offence of mischief. But it must not be supposed that the present Section applies only to cases in

which the loss or damage is of a less amount than is mentioned in these Sections. The Penal provisions relating to mischief have been framed on the same principle which pervades the Code of first providing a certain amount of punishment for all offences of a particular denomination and then proceeding to provide heavier punishment for aggravated offences of that kind. In every case in which mischief is committed, an offence punishable by this Section is committed. But if in any particular case there is any circumstance which brings it within any of the subsequent Penal clauses whereby heavier punishment is provided, and if that circumstance can be proved, that subsequent clause is then the appropriate one for the punishment of the offence committed.

427. Whoever commits mischief and thereby causes loss or damage to the amount of fifty Rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Committing mischief and thereby causing damage to the amount of 50 Rupees.

See the note to Section 426.

In estimating the amount of the loss or damage caused, the actual loss or damage only should be taken into consideration and not the damage which, in consequence of such loss, may be occasioned to the sufferer. It is not clear whether to support the charge under this Section, the Court must be satisfied not only that the offender intended to cause wrongful loss but also that he intended (or knew himself to be likely) to cause wrongful loss to the amount of fifty Rupees or upwards (see Section 435). It will be reasonable to infer such an intention in the absence of satisfactory proof on behalf of the accused person, shewing that he did not contemplate or intend to cause mischief to this amount.

428. Whoever commits mischief by killing, poisoning, maiming, or rendering useless, any animal or animals of the value of ten Rupees or

Mischief by killing or maiming any animal of the value of 10 Rupees.

upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

It must be proved that the destruction or damage is of that wilful description which falls within the definition of mischief. But it must, it seems, be understood that the animal destroyed is the subject of property (see Section 430). Wild animals which have been captured as bears, tigers, &c., kept in cages, would probably be deemed within the meaning of the Section.

429. Whoever commits mischief by killing, poisoning, maiming, or rendering useless, any elephant, camel, horse, mule, buffalo, bull, cow, or ox, whatever may be the value thereof, or any other animal of the value of fifty Rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Mischief by killing or maiming cattle, &c., or any animal of the value of 50 Rupees.

ing, maiming, or rendering useless, any elephant, camel, horse, mule, buffalo, bull, cow,

430. Whoever commits mischief by doing any act which causes or which he knows to be likely to cause a diminution of the supply of water for agricultural purposes, or for food or drink for human beings, or for animals which are property, or for cleanliness, or for carrying on any manufacture, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Mischief by causing diminution of water for agricultural purposes, &c.

which causes or which he knows to be likely to cause a diminution of the supply of

water for agricultural purposes, or for food or drink for human beings, or for animals which are property, or for cleanliness, or for carrying on any manufacture, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Injuries to a river or well or any natural or artificial channel or reservoir of water, or any work for the purpose of irrigation, if such injuries cause or are likely to cause a diminution of the supply by wrongfully drawing off or diverting water are punishable under this Section. In some parts of India disputes about water for irrigation are numerous and are carried on with great virulence. When two villages draw their supply from one tank and the scantiness of the supply, renders it necessary that they should each be supplied for a regulated number of

hours, it is not unusual for the people of one village to attempt undue appropriation during the night ; an act which, if discovered by the rival village, ends in an affray of a very serious character. Such an act causing wrongful loss to individuals or to the "public" or community of the injured village will, it seems, be punishable under the present Section. Mischief committed by drawing off water used for domestic and other like purposes and thereby causing a diminution of the supply, will likewise be punishable under this Section.

431. Whoever commits mischief by doing any act Mischief by injury to public road, bridge, or river. which renders or which he knows to be likely to render any public road, bridge, navigable river, or navigable channel, natural or artificial, impassable or less safe for travelling or conveying property, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

In the definition of mischief, loss or damage to the public is mentioned. This Section applies when the mischief is to a public road, navigable river, &c., and is of the kind mentioned. An obstruction or impediment caused not wilfully but by some negligent act or omission is an offence which is punishable not under this but under a preceding Section (see Section 283). Mischief caused to a private pathway, bridge, &c., is punishable under Section 426.

432. Whoever commits mischief, by doing any act which causes or which he knows to be likely to cause Mischief by causing inundation or obstruction to public drainage attended with damage. an inundation or an obstruction to any public drainage attended with injury or damage shall be punished with imprisonment of either description for a term which may extend to five years or with fine, or with both.

Works of irrigation are within the protection of Section 430. Wilful injuries to embankments where such injuries are not

punishable by a special law (such as the Act XXXII. of 1855 relating to embankments in Bengal) are punishable under this Section. Works of public drainage such as those which exist or are in course of construction in some of the Presidency towns are included in the present Section if such works are not constructed under a local or special act containing the necessary provisions for their protection.

433. Whoever commits mischief by destroying or moving any light-house or other light used as a sea-mark, or any sea-mark or buoy or other thing placed as a guide for navigators, or by any act which renders any such light-house, sea-mark, buoy, or other such thing as aforesaid less useful as a guide for navigators, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Mischief by destroying or moving or rendering less useful a light-house or sea-mark.

Injuries to buoys, beacons, moorings, &c., within the limits of a Port which has been made subject to the provisions of Act XXII. of 1855, are punishable under that special law and not under the Penal Code.

Exhibiting false light, marks or buoys to mislead navigators, is an offence punishable by Section 281.

434. Whoever commits mischief by destroying or moving any land-mark fixed by the authority of a public servant, or by any act which renders such land-mark less useful as such, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Mischief by destroying or moving, &c., a land-mark fixed by public authority.

Land marks or boundary marks fixed by the authority of Revenue or Survey officers, and similar land marks seem to be intended. It is to be observed that Acts III. of 1846, I. of 1847, and XXVIII. of 1860, which provide for the establishment

of boundary marks in the Madras and Bombay Presidencies and in the North Western Provinces, contain provisions for the protection of such boundary marks. These special laws will not be affected by the Code.

435. Whoever commits mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause damage to any property to the amount of one hundred Rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Mischief by fire or explosive substance with intent to cause damage to amount of 100 Rupees.

When mischief is committed by means of fire or any explosive substance and the evidence enables the Court to conclude that the offender not only intended to cause wrongful loss, which intention is necessary to the committing of "mischief," but either intended or knew himself to be likely to cause wrongful loss or damage to the amount of 100 Rupees there may be a conviction under this Section. If the evidence falls short of this, but is sufficient to show that mischief to the amount of 50 Rupees has been caused, whether by fire or by any means whatsoever, the offender may be convicted under Section 427. If the offence proved is simple mischief and there is no aggravating circumstance in the case, the offender is punishable under Section 426.

436. Whoever commits mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, the destruction of any building which is ordinarily used as a place of worship or as a human dwelling or as a place for the custody of property, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Mischief by fire or explosive substance with intent to destroy a house, &c.

This highly penal provision is for the punishment of the offence mentioned in Section 435 when such offence is attended with the aggravating circumstance, that the offender contemplated the destruction of a house, place of worship, or place used for the custody of property. The grass or mat huts of the lowest classes are placed on a level with the substantial secure and valuable dwellings of the rich; and it is left to the discretion of the judge to distinguish in awarding punishment between cases of great criminality and those in which the injury done is inconsiderable. The word "building" must, however, it seems be understood to mean a structure of some permanence and fixedness, not a mere tent or temporary erection.

If death or hurt is caused by the fire, the offender may be punishable under the Chapter of Offences against the Human Body. If A sets fire to an inhabited house, although his design may be only to commit mischief, he will be guilty of murder, if knowing the house to be inhabited he causes, by the fire, the death of the inmates. What the offender intended or knew to be likely to happen in consequence of his mischievous acts will generally be a matter of inference from the circumstances.

A man may commit mischief in certain cases on his own property. In such cases it seems that a person causing mischief by fire to his own house will be punishable under this Section.

437. Whoever commits mischief to any decked vessel or any vessel of a burden of twenty tons or upwards, intending to destroy or render unsafe, or knowing it to be likely that he will thereby destroy or render unsafe that vessel, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Mischief with intent to destroy or make unsafe a decked vessel or a vessel of 20 tons burden.

Decked vessels of any size, however small, and such undecked vessels as the large river craft of Bengal and the class of native vessels engaged in the coasting trade and otherwise on

the western coast of India, appear to be meant. If life is endangered, the offender may be dealt with under the provisions of the preceding Chapter. *as /*

438. Whoever commits or attempts to commit by fire or any explosive substance, such mischief as is described in the last preceding Section, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Punishment for the mischief described in the last Section when committed by fire or any explosive substance.

See the notes to Section 437.

If A, having insured his ship, voluntarily causes or attempts to cause it to be set on fire and destroyed with the intention of causing damage to the insurers, he has committed an offence punishable under this Section, although the vessel may be his own property.

439. Whoever intentionally runs any vessel aground or ashore, intending to commit theft of any property contained therein or to dishonestly misappropriate any such property, or with intent that such theft or misappropriation of property may be committed, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Running vessel ashore with intent to commit theft, &c.

The sense in which the word "vessel" is here used is explained by the 48th Section. In the great navigable rivers of Bengal and probably elsewhere, the crews of river craft, acting in league with persons on shore, sometimes run their vessels aground or ashore, and thus enable their confederates to plunder the cargo.

440. Whoever commits mischief, having made preparation for causing to any person death, or hurt, or wrongful restraint, or fear of

Mischief committed after preparation made for causing death, or hurt.

death, or of hurt, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

OF CRIMINAL TRESPASS.

The substantive offences which the Code makes punishable under this head of the Chapter of Offences against property, considered by themselves, are such as might be visited with a light punishment ; but when they are attended with aggravating circumstances and above all when they are viewed in relation to some other offence, as murder, theft, &c., the commission of which is the main object of the offender, they become grave offences. The criminal trespass, in whatever form and whether aggravated or not, if it is preparatory to the commission of an offence against person or property, deserves severe punishment.

“Criminal Trespass,” the offence which is first defined and punished, enters into almost all the subsequent offences which are contained under this division. Those penal provisions in fact punish this offence with various degrees of punishment when it is attended with certain aggravating circumstances. The trespass may be aggravated by the way in which it is committed, or by the end for which it is committed.

But the offence itself is to be distinguished from those previously noticed, inasmuch as it does not necessarily imply dishonesty, fraud or deceit. The criminal trespasser whose object is “to intimidate, insult or annoy,” for instance, has not necessarily any design against the property of the sufferer; perhaps his object is only a frolic.

This division begins by defining the offences of 1, criminal trespass ; 2, house-trespass ; 3, lurking house-trespass ; 4, lurking house-trespass by night ; 5, house-breaking ; and 6, house-breaking by night. The definition of the lower of these offences includes all cases which are within the definition of the higher

CRIMINAL TRESPASS.

offences. The four last named offences are ho with different circumstances of aggravation ; and is by its definition a species of criminal trespass.

When any of these offences, for instance house-trespass, is committed in order to the committing of another offence, theft for example, this purpose is treated, as will be seen, not as a distinct offence, but as an aggravation of the trespass.

441. Whoever enters into or upon property in the possession of another with intent to commit an offence, or to intimidate, insult, or annoy any person in possession of such property ; or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult, or annoy any such person, or with intent to commit an offence, is said to commit " criminal trespass."

In this definition the entry and the intention with which a person enters are the essentials.

1. The entry into or upon property. " Property" here, must from the nature of the provision, mean corporeal property, either land or a building, tent or vessel ; and possession would seem to mean actual occupation as contradistinguished from a constructive possession, or still more a vacant possession. It would seem, a person entitled to a right of way or other incorporeal right is not a person in possession of property within this definition and that there can be no criminal trespass "into or upon" such property.

2. The intention constitutes the entry criminal. Merely to trespass is not ordinarily such an offence ; but when the trespass is in order to the commission of an offence (see Section 40), or when it is to intimidate, to insult, or to annoy, it is punished. In some cases an act of trespass for purposes other than these is punishable (see Sections 509, 510).

The latter part of the definition makes unlawful continuance on property equivalent to an unlawful entry, the intention being criminal. Suppose A has a right of way across B's land, or

suppose A enters B's shop for the purpose of buying, in either case he commits no trespass, still less does he commit a criminal trespass. But if having lawfully entered, he continues there not in the fair exercise of his right of way, or for the purpose of purchasing goods (as the case may be), but intending to commit some offence or to insult or annoy, he is a criminal trespasser.

442. Whoever commits criminal trespass by entering into or remaining in any building, tent, or vessel, used as a human dwelling, or any building used as a place for worship, or as a place for the custody of property, is said to commit "house-trespass."

Explanation. The introduction of any part of the criminal trespasser's body is entering sufficient to constitute house trespass.

443. Whoever commits house-trespass, having taken precautions to conceal such house-trespass from some person who has a right to exclude or eject the trespasser from the building, tent, or vessel which is the subject of the trespass, is said to commit "lurking house-trespass."

444. Whoever commits lurking house-trespass after sunset and before sunrise, is said to commit "lurking house-trespass by night."

445. A person is said to commit "house-breaking," who commits house-trespass if he effects his entrance into the house or any part of it in any of the six ways hereinafter described; or if, being in the house or any part of it for the purpose of committing an offence, or having committed an offence therein, he quits the house or any part of it in any of such six ways, that is to say:—

First. If he enters or quits through a passage made by himself, or by any abettor of the house-trespass, in order to the committing of the house-trespass.

Secondly. If he enters or quits through any passage

not intended by any person, other than himself or an abettor of the offence, for human entrance; or through any passage to which he has obtained access by scaling or climbing over any wall or building.

Thirdly. If he enters or quits through any passage which he or any abettor of the house-trespass has opened, in order to the committing of the house-trespass, by any means by which that passage was not intended by the occupier of the house to be opened.

Fourthly. If he enters or quits by opening any lock in order to the committing of the house-trespass, or in order to the quitting of the house after a house-trespass.

Fifthly. If he effects his entrance or departure by using criminal force or committing an assault, or by threatening any person with assault.

Sixthly. If he enters or quits by any passage which he knows to have been fastened against such entrance or departure, and to have been unfastened by himself or by an abettor of the house-trespass.

Explanation. Any out-house or building occupied with a house, and between which and such house there is an immediate internal communication, is part of the house within the meaning of this Section.

Illustrations.

(a) A commits house-trespass by making a hole through the wall of Z's house, and putting his hand through the aperture. This is house-breaking.

(b) A commits house-trespass by creeping into a ship, at a port-hole between decks. This is house-breaking.

(c) A commits house-trespass by entering Z's house through a window. This is house-breaking.

(d) A commits house-trespass by entering Z's house through the door, having opened a door which was fastened. This is house-breaking.

(e) A commits house-trespass by entering Z's house through the door, having lifted a latch by putting a wire through a hole in the door. This is house-breaking.

(f) A finds the key of Z's house-door, which Z had lost, and commits house-trespass by entering Z's house, having opened the door with that key. This is house-breaking.

(g) Z is standing in his door-way. A forces a passage by knocking Z down, and commits house-trespass by entering the house. This is house-breaking.

(h) Z, the door-keeper of Y, is standing in Y's door-way. A commits house-trespass by entering the house, having deterred Z from opposing him by threatening to beat him. This is house-breaking.

446. Whoever commits house-breaking after sunset and before sunrise, is said to commit "house-breaking by night."

447. Whoever commits criminal trespass shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred Rupees, or with both.

448. Whoever commits house-trespass, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand Rupees, or with both.

The following Sections deal with the offence of criminal trespass when it is aggravated by the end for which it is committed. House-trespass may be committed for no other purpose than the purpose of playing some idle trick on the inmates of a dwelling, or it may be committed in order to the perpetration of a murder or other atrocious crime. These Sections regard the ulterior offence which the house trespasser has in view and visit his crime with a proportionate punishment.

449. Whoever commits house-trespass in order to the committing of any offence punishable with death, shall be punished with transportation for life, or with rigorous imprisonment for a term not exceeding ten years, and shall also be liable to fine.

"In order to the committing, &c." The intention and design is the commission of an offence. To bring the offender within these severe penal provisions, it is not made necessary that he should do any further act than the house-trespass towards the

commission of the "offence punishable with death." But to justify a conviction, there should be clear proof of the design to commit a murder or other like offence. In the absence of proof of some further act done, in addition to the criminal trespass, in the prosecution of the murderous intention it can rarely happen that the evidence will suffice for a conviction under this Section.

450. Whoever commits house-trespass in order to the committing of any offence punishable with transportation for life, shall be punished with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

House-trespass in order to the commission of an offence punishable with transportation for life.

See the note to Section 449. The offences which are made punishable with transportation for life are mentioned at page 33.

451. Whoever commits house-trespass in order to the committing of any offence punishable with imprisonment shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine; and if the offence intended to be committed is theft, the term of the imprisonment may be extended to seven years.

House-trespass in order to the commission of an offence punishable with imprisonment.

For the offences punishable with imprisonment see page 34.

452. Whoever commits house-trespass having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

House-trespass after preparation made for causing hurt to any person.

See Section 382 and the Illustration.

453. Whoever commits lurking house-trespass, or house-breaking, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.

The following Sections in like manner deal with the offences of lurking house-trespass or house-breaking, when they are aggravated by the purpose of the offenders to commit a crime.

454. Whoever commits lurking house-trespass, or house-breaking, in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if the offence intended to be committed is theft, the term of the imprisonment may be extended to ten years.

Any such trespass, in order to the committing of any offence punishable with death or with transportation for life is punishable by Sections 449, 450.

455. Whoever commits lurking house-trespass, or house-breaking, having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt or of assault or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

456. Whoever commits lurking house-trespass by night, or house-breaking by night, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

457. Whoever commits lurking house-trespass by

Lurking house-trespass or house-breaking by night in order to the commission of an offence punishable with imprisonment.

night or house-breaking by night in order to the committing of any offence punishable with imprisonment shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine; and if the offence intended to be committed is theft, the term of the imprisonment may be extended to fourteen years.

See the note to Section 454.

458. Whoever commits lurking house-trespass by

Lurking house-trespass or house-breaking by night after preparation made for causing hurt to any person.

night, or house-breaking by night, having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

459. Whoever, whilst committing lurking house-

Grievous hurt caused whilst committing lurking house-trespass or house-breaking.

trespass or house-breaking, causes grievous hurt to any person or attempts to cause death or grievous hurt to any person, shall be punished with transportation for life or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

It is not necessarily a part of the offence defined by the present Section, that preparation should be made or that the house trespass should be committed with the intention to commit grievous hurt or death. If in the commission of the lurking house-trespass or house-breaking ("whilst committing," appears to include the whole time of the criminal trespass) a personal injury of the kind here mentioned is caused or attempted to be caused, it is immaterial that it was without premeditation and sudden.

460. If at the time of the committing of lurking house-trespass by night or house-breaking by night, any person guilty of such offence shall voluntarily cause or attempt to cause death or grievous hurt to any person, every person jointly concerned in committing such lurking house-trespass by night or house-breaking by night shall be punished with transportation for life or with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

All persons jointly concerned in house-breaking &c., to be punishable for death or grievous hurt caused by one of their number.

See Sections 394, 396.

The following Sections, though ranged under the head of criminal trespass and perhaps within the scope of the definition of that offence, seem to punish a certain form of attempt to commit theft or mischief through criminal trespass on a closed receptacle. "Case, package, or receptacle," are mentioned in Section 480, relating to the offence of using a false trade mark. The word "receptacle" may include not only a room, a part of a room, or closet, &c. but a box or closed package.

461. Whoever dishonestly or with intent to commit mischief, breaks open or unfastens any closed receptacle which contains or which he believes to contain property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Dishonestly breaking open any closed receptacle containing or supposed to contain property.

462. Whoever, being entrusted with any closed receptacle which contains or which he believes to contain property, without having authority to open the same, dishonestly, or with intent to commit mischief, breaks open or unfastens that receptacle, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Punishment for same offence when committed by person entrusted with custody.

CHAPTER XVIII.

OF OFFENCES RELATING TO DOCUMENTS
AND TO TRADE OR PROPERTY-MARKS.

The offence of forgery is committed when, by a counterfeit, a document is falsely made to represent some other supposed genuine document for a purpose of deception. The relation which this offence bears to the general system of penal law may be thus stated. In most affairs of importance the intentions, assurances or directions of men are notified and authenticated by means of written instruments. Upon the authenticity of such instruments, the security of many civil rights, especially the right of property, frequently depends; it is therefore of the highest importance to society to exclude the numerous frauds and injuries which may obviously be perpetrated by procuring a false and counterfeited written instrument to be taken and acted on as genuine.

In reference to frauds of this description, it is by no means essential that punishment should be confined to cases of actually accomplished fraud. The very act of falsely making and constructing such an instrument with an intention to defraud or deceive is sufficient according to the acknowledged principles of criminal jurisprudence to constitute a crime. The false making is in itself part of the endeavour to defraud, and the existence of the criminal intent is clearly manifested by an act done in furtherance and in part execution of that intention.

An instrument which is false and untrue only because the facts which it states are false and untrue, differs from a forged document. Where the instrument is forged, as where a certificate purporting to be signed by a public servant was not in truth signed by him, a person to whom it is shewn is deceived, because he is induced to suppose that the fact certified is accre-

To constitute a forgery, the false document must be made—
 “With intent to cause damage or injury to the public,” or to any class of the public, or to any community. Forgeries of public securities, of the records of Courts of Justice, of registers kept by public servants, of documents certifying that a person has the requisite nautical skill and fitness to act as a master mariner, or has competent medical skill, &c., or of such documents as are mentioned in Illustrations (j) and (k) of the following Section, seem to come within these words.

“Or to any person.” Besides such documents as tend to a public damage or injury, every false document, by whatever name it is called, which is intended to cause damage or injury to an individual, is included.

“Or to support any claim or title.” Even if a man has a legal claim or title to property, he will be guilty of forgery if he counterfeits documents in order to support it. Any false document purporting to create, extend, transfer, or otherwise to support, a right or alleged right is included.

“Or to cause any person to part with property.” As orders or requests for the payment of money or delivery of goods, &c.

“Or to enter into any express or implied contract.” As if a man is induced to employ another in a certain capacity by forged documents respecting his qualifications.

464. A person is said to make a false document :—
 Making a false document.

First.—Who dishonestly or fraudulently makes, signs, seals, or executes a document or part of a document, or makes any mark denoting the execution of a document, with the intention of causing it to be believed that such document or part of a document was made, signed, sealed, or executed by, or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed or executed, or at a time at which he knows that it was not made, signed, sealed or executed ; or

“Makes, signs, seals, or executes a document or part of a document, or makes any mark denoting the execution.” The

word "document" has, we have seen, an extensive meaning assigned to it. The word seems to include every thing done by the pen, by engraving, by printing or otherwise, whereby is made on paper, parchment, wood, or other substance a representation of words or their equivalents addressed to the eye. Every writing used for the purpose of authentication, if falsely made, is a "false document,"—as in the case of a will by which a testator signifies his intentions as to the disposition of his property,—or of a certificate by which a public servant assures others of the truth of any fact,—or of a warrant by which a Magistrate signifies his authority to arrest an offender. And the words "false document" include not only writings, but also false seals, stamps, and all other visible marks of distinction by which the truth of any fact is authenticated. But where the falsehood consists in a mark of distinction falsely testifying to the quality, or genuineness, or to the ownership of any article, it seems to be a false trade or property mark and to be properly dealt with under the penal provisions contained in the latter part of this Chapter.

The most obvious way of making a false document is to write or print, as the case may be, the whole imitation of a real or imaginary original. But to write a signature is the same in law as to write the entire instrument. And the signature may be made by a mark as well as by writing the letters of a name.

It can make no difference whether the whole document is false or whether it is merely false in the material part by which the fraud or deceit is to be effected. If the document is falsified for a dishonest or fraudulent purpose, it is a false document. .

"Or by the authority of a person," &c. If a man writes another's name by his authority, it is not of course forgery. And if he has not authority in fact, but acting in good faith without fault or carelessness, believes himself to be authorized, he does not commit this offence. But if he is authorized to do a certain thing, as to fill up with a certain sum a blank cheque signed by A (see Illustration *d*), and he departs from his au-

thority by dishonestly inserting a larger sum, he commits forgery.

“ Or at a time at which he knows that it was not made, &c.”
As if the document is made to bear a wrong date for some dishonest purpose.

The following Illustrations explain the operation of this Section.

(b) A, without Z's authority, affixes Z's seal to a document purporting to be a conveyance of an estate from Z to A, with the intention of selling the estate to B, and thereby of obtaining from B the purchase money. A has committed forgery.

(c) A picks up a cheque on a Banker signed by B, payable to bearer, but without any sum having been inserted in the cheque. A fraudulently fills up the cheque by inserting the sum of ten thousand Rupees. A commits forgery.

(d) A leaves with B, his agent, a cheque on a Banker signed by A, without inserting the sum payable, and authorizes B to fill up the cheque by inserting a sum not exceeding ten thousand Rupees for the purpose of making certain payments. B fraudulently fills up the cheque by inserting the sum of twenty thousand Rupees. B commits forgery.

(e) A draws a Bill of Exchange on himself in the name of B without B's authority, intending to discount it as a genuine Bill with a Banker and intending to take up the Bill on its maturity. Here, as A draws the Bill with intent to deceive the Banker by leading him to suppose that he had the security of B, and thereby to discount the Bill, A is guilty of forgery.

(h) A sells and conveys an estate to Z. A afterwards, in order to defraud Z of his estate, executes a conveyance of the same estate to B, dated six months earlier than the date of the conveyance to Z, intending it to be believed that he had conveyed the estate to B before he conveyed it to Z. A has committed forgery.

(j) A writes a letter and signs it with B's name without B's authority, certifying that A is a man of good character and in distressed circumstances from unforeseen misfortune, intending by means of such letter to obtain alms from Z and other persons. Here, as A made a false document in order to induce Z to part with property, A has committed forgery.

(k) A, without B's authority, writes a letter and signs it in B's name certifying to A's character, intending thereby to obtain employment under Z. A has committed forgery, inasmuch as he intended to deceive Z by the forged certificate, and thereby induce Z to enter into an expressed or implied contract for service.

And see also Illustrations (d) and (e) of the following Explanation.

Secondly.—Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part thereof, after it has been made or executed either by himself or by any other person, whether such person be living or dead at the time of such alteration ; or

A document which has once existed as a genuine document, may become a “false document” by reason of some addition, or omission, or by the obliteration of some material part.

Illustrations.

(a) A has a letter of credit upon B for 10,000 Rupees written by Z. A, in order to defraud B, adds a cypher to the 10,000, and makes the sum 100,000, intending that it may be believed by B that Z so wrote the letter. A has committed forgery.

(f) Z's will contains these words—“I direct that all my remaining property be equally divided between A, B, and C.” A dishonestly scratches out B's name, intending that it may be believed that the whole was left to himself and C. A has committed forgery.

(g) A endorses a Government Promissory Note and makes it payable to Z or his order by writing on the Bill the words, “Pay to Z or his order” and signing the endorsement. B dishonestly erases the words “Pay to Z, or his order” and thereby converts the special endorsement into a blank endorsement. B commits forgery.

But a complete cancellation or obliteration of a document, like the destruction of a document, is an offence specifically made punishable by a later Section (477), and which seems not to fall within this definition.

Thirdly.—Who dishonestly or fraudulently causes any person to sign, seal, execute, or alter a document, knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him he does not, know the contents of the document or the nature of the alteration.

(i) Z dictates his will to A. A intentionally writes down a different legatee from the legatee named by Z, and by representing to Z that he has prepared the will according to his instructions, induces Z to sign the will. A has committed forgery.

A document may be a false document, although it is signed or executed by the person by whom it purports to be signed or

executed. This happens, where a person (as in the case given in the Illustration) is fraudulently induced to execute a Will, a material alteration having been made in the writing without his knowledge; for in such case, although the signature is genuine, the instrument is false, because it does not truly indicate the testator's intentions, and it is the forgery of the person who fraudulently caused such Will to be signed, for he made it to be the false instrument which it really is.

Explanation. A man's signature of his own name may amount to forgery.

(a) A signs his own name to a Bill of Exchange, intending that it may be believed that the Bill was drawn by another person of the same name. A has committed forgery.

(b) A writes the word "accepted" on a piece of paper and signs it with Z's name, in order that B may afterwards write on the paper a Bill of Exchange drawn by B upon Z and negotiate the Bill as though it had been accepted by Z. A is guilty of forgery; and if B knowing the fact draws the Bill upon the paper pursuant to A's intention, B is also guilty of forgery.

(c) A picks up a Bill of Exchange payable to the order of a different person of the same name. A endorses the Bill in his own name, intending to cause it to be believed that it was endorsed by the person to whose order it was payable: here A has committed forgery.

(d) A purchases an estate sold under execution of a decree against B. B after the seizure of the estate, in collusion with Z, executes a lease of the estate to Z at a nominal rent and for a long period, and dates the lease six months prior to the seizure, with intent to defraud A and to cause it to be believed that the lease was granted before the seizure. B, though he executes the lease in his own name, commits forgery, by antedating it.

(e) A, a trader, in anticipation of insolvency, lodges effects with B for A's benefit and with intent to defraud his creditors, and in order to give a colour to the transaction, writes a Promissory Note binding himself to pay to B a sum for value received, and antedates the note, intending that it may be believed to have been made before A was on the point of insolvency. A has committed forgery under the first head of the definition.

It is a false document if the offender makes it falsely in the name of any other person, although that name happens also to be the offender's own name. A man who makes a promissory note in his own name without any false description or addition and with an honest intention, if he afterwards uses or attempts to use the note, pretending that it is signed by another person

of the same name does not by this false representation make the promissory note a "false document." It was a genuine document when he signed it and does not become false by his subsequent use of it for the purpose of cheating. In such cases as those mentioned in the Illustrations (*d*) and (*e*) a man signs or executes a document in his own name which is false in a material part, and is calculated to induce another to give credit to it as genuine and authentic where it is false and deceptive. A man who having conveyed land afterwards for fraudulent purposes executes a document, purporting to be a prior conveyance of the same land intends by this false document to obtain credit by deception, the document purporting to have been made at a time earlier than the true time of its execution.

Explanation 2. The making of a false document in the name of a fictitious person, intending it to be believed that the document was made by a real person, or in the name of a deceased person, intending it to be believed that the document was made by the person in his life-time, may amount to forgery.

Illustration.

A draws a Bill of Exchange upon a fictitious person, and fraudulently accepts the Bill in the name of such fictitious person with intent to negotiate it. A commits forgery.

If a man forges the name of another person real or fictitious, or the name of a deceased person, he makes a false document if the document is made for a fraudulent or dishonest purpose. It is not the less false, because the name used is a mere fiction.

465. Whoever commits forgery shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Punishment for forgery.

See the notes to the preceding Sections.

The facts which show that the document is a false document within Section 464 must be proved ; also, that the accused made the false document : and lastly the guilty intention of the maker to cause damage or injury, or to support a claim &c. It

is not a necessary part of this offence that any damage or injury should be actually suffered or that any fraud should be perpetrated. Nor is using or uttering the forged document a part of this offence. From the intention that the false document should deceive others into a belief that it is genuine it may generally be inferred that there was an intention to damage or injure. It will not avail the offender to show that he meant to pay the promissory note or other forged document when it became due, or even that he actually paid it and so prevented any damage or injury.

466. Whoever forges a document, purporting to be a record or proceeding of or in a Court of Justice, or a Register of Birth, Baptism, Marriage, or Burial, or a register kept by a public servant as such, or a certificate or document purporting to be made by a public servant in his official capacity, or an authority to institute or defend a suit, or to take any proceedings therein, or to confess judgment, or a power of attorney, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

An increased punishment may be awarded when the forgery is of certain documents materially affecting public and private interests.

467. Whoever forges a document which purports to be a valuable security, or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest, or dividends thereon, or to receive or deliver any money, moveable property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any moveable property or valuable secu-

rity, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

This Section punishes the forgery of such documents as are valuable securities (see Section 30) and of the other documents here mentioned.

468. Whoever commits forgery, intending that the document forged shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Forgery, though a substantive offence, partakes of the nature of an attempt. It is usually an act done in furtherance of some other criminal design. If it can be proved that the purpose of the offender in committing the forgery is to obtain property dishonestly, or if his guilty purpose comes within the definition of cheating (Section 136), he is punishable under the present Section. The intention of the forger may be fairly inferred in most cases from the contents of the forged documents.

469. Whoever commits forgery, intending that the document forged shall harm the reputation of any party, or knowing that it is likely to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

A, with the intention of harming B's reputation or knowing that what he does is likely to have this effect, writes a letter in imitation of B's handwriting purporting to be addressed to a confederate in some disgraceful or dishonest transaction and shows this letter to other persons. He has committed this offence. As to what written statements may be said to have

a person's reputation, the Chapter (XXI) of Defamation should be consulted.

The making of forged documents is the offence punishable by the preceding Sections. The mere possession of such documents and the using or uttering them and the making preparations for their manufacture are the offences dealt with in the following Sections.

470. A false document made wholly or in part by forgery is designated "a forged document."

"A forged document."

471. Whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document, shall be punished in the same manner as if he had forged such document.

Fraudulently using as genuine a forged document.

There must be a using of the document by a person who knows or has reason to believe that it is forged, and such using must be with the intention to defraud or to cause wrongful gain or wrongful loss. In deciding whether there has been a "using as genuine" of the document, the Courts will advert to the nature of the document. Some documents, such as receipts, are intended to remain in the holder's possession, other documents such as cheques or promissory notes must be tendered to the persons who are to pay them. Whatever the document, the dealing with it by the accused person, must be such as to satisfy the Court that he intended to defraud, but it is not necessary that wrongful gain or wrongful loss should actually be caused by the use.

472. Whoever makes or counterfeits any seal, plate, or other instrument for making an impression, intending that the same shall be used for the purpose of committing any forgery which would be punishable under Section 467 of this Code, or with such intent

Making or possessing a counterfeit seal, plate, &c., with intent to commit a forgery punishable under Section 467.

has in his possession any such seal, plate, or other instrument knowing the same to be counterfeit, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

The making or possession of instruments such as plates for engraving bank notes, for forging valuable securities, &c. where the purpose for which such instruments are intended to be used is known, is the offence here punished. In the Chapter of Offences relating to Coin and Government Stamps, there are provisions of a like kind.

473. Whoever makes or counterfeits any seal, plate, or other instrument for making an impression, intending that the same shall be used for the purpose of committing any forgery which would be punishable under any Section of this Chapter other than Section 467, or with such intent has in his possession any such seal, plate, or other instrument, knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Making or possessing a counterfeit seal, plate, &c., with intent to commit a forgery punishable otherwise.

The offence is the same as that punishable under the preceding Sections, except that the preparations are for the forgery of a different class of documents.

474. Whoever has in his possession any document, knowing the same to be forged, and intending that the same shall fraudulently or dishonestly be used as genuine, shall, if the document is one of the description mentioned in Section 466 of this Code, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and if the document is one of the descrip-

Having possession of a document known to be forged with intent to use it as genuine.

tion mentioned in Section 467, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Persons who have in their possession forged documents of any description knowing that they are forged, are guilty of this offence if they intend that the documents shall be used for a fraudulent or dishonest purpose. It does not signify whether such fraudulent use will be by themselves or by other persons to whom they may dispose of the documents for the purpose of such fraudulent use. It may be reasonably inferred that a person in whose possession several forged documents are found has an intention to use them fraudulently, unless he can give satisfactory information as to how he became possessed of them and as to the purpose for which he retains them in his possession.

475. Whoever counterfeits, upon or in the substance of any material, any device or mark used for the purpose of authenticating any document described in Section 467 of this Code, intending that such device or mark shall be used for the purpose of giving the appearance of authenticity to any document then forged or thereafter to be forged on such material, or who with such intent has in his possession any material upon or in the substance of which any such device or mark has been counterfeited, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

The commencement of the forgery of bank notes and other similar securities, where it has proceeded to the length which is described in this Section, is treated as a substantive offence and punished. Also the possession of the prepared material, &c., is punished.

476. Whoever counterfeits, upon or in the substance of any material, any device or mark used for the purpose of authenticating any document other than the documents described in Section 467 of this Code, intending that such device or mark shall be used for the purpose of giving the appearance of authenticity to any document then forged or thereafter to be forged on such material, or who with such intent has in his possession any material upon or in the substance of which any such device or mark has been counterfeited, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

477. Whoever fraudulently or dishonestly, or with intent to cause damage or injury to the public or to any person, cancels, destroys or defaces, or attempts to cancel, destroy, or deface, or secretes or attempts to secrete, any document which is or purports to be a will or an authority to adopt a son, or any valuable security, or commits mischief in respect to such document, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

The defacing or destroying of documents of less importance, comes within the definition of mischief.

OF TRADE AND PROPERTY-MARKS.

478. A mark used for denoting that goods have been made or manufactured by a particular person or at a particular time or place, or that they are of a particular quality, is called "a trade-mark."

The mark whether it is a letter, or a name, sign, seal or any arbitrary mark, if it is used to shew that the thing on which it is placed is the work of a particular person or was made at a particular place, &c. is "a trade mark." The mark or name which an artist, sculptor, or engraver may use to denote that a picture, statue, or engraving is the work of his hands may perhaps be within these words.

479. A mark used for denoting that moveable property belongs to a particular person, is called "a property-mark."

480. Whoever marks any goods, or any case, package, or other receptacle containing goods, or uses any case, package, or other receptacle with any mark thereon, with the intention of causing it to be believed that the goods so marked, or any goods contained in any such case, package, or receptacle so marked, were made or manufactured by any person by whom they were not made or manufactured, or that they were made or manufactured at any time or place at which they were not made or manufactured, or that they are of a particular quality of which they are not, is said to use a false trade-mark.

The mark may be one which is put on the article itself (e. g. stamped on the cloth itself), or is put on the packing in which the cloth is packed, or it may be in the shape of a printed wrapper in which the goods are folded. If it is intended to deceive persons into a belief that the goods were made by a person by whom they were not made, &c., to put such a mark on goods is to use a false trade mark.

481. Whoever marks any moveable property or goods, or any case, package, or other receptacle containing moveable property or goods, or uses any case, package, or other receptacle having any mark thereon, with the intention of causing it to be believed that the

property or goods so marked, or any property or goods contained in any case, package, or other receptacle so marked, belong to a person to whom they do not belong, is said to use a false property-mark.

482. Whoever uses any false trade-mark or any false property-mark with intent to deceive or injure any person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Punishment for using a false trade or property-mark with intent to deceive or injure any person.

It is the use of the false mark "with intent to deceive," that constitutes the offence which is here punished. If the maker of an article puts on it the trade-mark of another maker, and he does this with the intention that purchasers may be induced to believe that the article was made by such other maker, he has committed the offence. It will be no defence to shew that the article is in every respect equal or even superior to similar articles made by the other maker, if the offender intended to practice deception and used the mark for this purpose.

A person who uses a false property-mark is also punishable—as if he puts the name of a particular person, or of a corporation, or company, on his property in order that it may benefit by some privilege or exemption to which it is not really entitled.

But an intention to deceive or injure is essential. A person who marks his own goods or property with the initial letters of his name or with any arbitrary sign having no purpose of deceiving others, but merely with a view to identify what belongs to him, commits no offence, notwithstanding that the letters or marks which he uses, are also used by other persons and may therefore occasion strangers to believe that the goods, or horses, cattle, &c. so marked belong to some person other than their real owner.

483. Whoever, with intent to cause damage or injury to the public or to any person, knowingly counterfeits

Counterfeiting a trade or property-mark used by another,

with intent to cause damage or injury. any trade or property-mark used by any other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

A person counterfeits a trade or property-mark when he causes another mark to resemble the genuine mark, intending to practice deception thereby. (See Section 28.) A person who adopts a mark closely resembling a particular trade or property-mark, in ignorance that such mark is in use, commits no offence.

484. Whoever, with intent to cause damage or injury to the public or to any person, knowingly counterfeits any property-mark used by a public servant, or any mark used by a public servant to denote that any property has been manufactured by a particular person or at a particular time or place, or that the same is of a particular quality or has passed through a particular office, or that it is entitled to any exemption, or uses as genuine any such mark knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

An enhanced punishment is given where a property-mark used by a public servant is counterfeited. Probably marks used by officers in the collection of the revenue, marks impressed on salt, &c., may be within the protection of this Section.

485. Whoever makes or has in his possession any die, plate, or other instrument for the purpose of making or counterfeiting any public or private property or trade-mark with intent to use the same for the purpose of counterfeiting such mark, or has in his possession any such property or trade-mark with intent that the same shall be used for the purpose of

denoting that any goods or merchandize were made or manufactured by any particular person or firm, by whom they were not made, or at a time or place at which they were not made, or that they are of a particular quality of which they are not, or that they belong to a person to whom they do not belong, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

The possession of the instrument for making counterfeit marks, where the possession is by a person who intends to use such instrument for the purposes made punishable by the other Sections, is here punished.

486. Whoever sells any goods with a counterfeit property or trade-mark, whether public or private, affixed to or impressed upon the same or upon any case, wrapper, or receptacle in which such goods are packed or contained, knowing that such mark is forged or counterfeit, or that the same has been affixed to or impressed upon any goods or merchandize not manufactured or made by the person or at the time or place indicated by such mark, or that they are not of the quality indicated by such mark, with intent to deceive, injure, or damage any person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

The seller of goods marked with counterfeit marks is punishable when he knows that the marks are forged or counterfeit; but to constitute this offence there must be also an intention to deceive, injure or damage. Suppose a person who is the owner of an article falsely marked with the name of a celebrated maker, sells the article not knowing that the mark is false, or knowing this but not intending to practice deception or to injure, he commits no offence. But it is otherwise if he leads the buyer to believe that the mark is genuine

and thus induces him to purchase it or to pay a larger price for it than he would otherwise have done.

487. Whoever fraudulently makes any false mark upon any package or receptacle containing goods, with intent to cause any public servant or any other person to believe that such package or receptacle contains goods which it does not contain, or that it does not contain goods which it does contain, or that the goods contained in such package or receptacle are of a nature or quality different from the real nature or quality thereof, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

The making of false marks of any description on goods for the purpose of deceiving Customs Officers or other public servants is punishable when it is done "fraudulently."

488. Whoever fraudulently makes use of any such false mark with the intent last aforesaid, knowing such mark to be false, shall be punished in the manner mentioned in the last preceding Section.

489. Whoever removes, destroys, or defaces any property-mark, intending or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

CHAPTER XIX.
OF THE CRIMINAL BREACH OF CONTRACTS
OF SERVICE.

The Indian Law Commissioners in their Note upon this Chapter say, "We agree with the great body of jurists in thinking that, in general, a mere breach of contract ought not to be an offence, but only to be the subject of a Civil action.

"To this general rule there are, however, some exceptions. Some breaches of contract are very likely to cause evil such as no damages, or only very high damages, can repair, and are also very likely to be committed by persons from whom it is exceedingly improbable that any damages can be obtained. Such breaches of contract are, we conceive, proper subjects for penal legislation.

"In England where the roads are secure, where the means of conveyance can easily be obtained, and damages sufficient to compensate for any inconvenience or expense which may have been suffered can easily be recovered, it would be unnecessary to provide a punishment for such breaches of contract as are made punishable by the following Section. But the mode of performing journeys and the state of society in this country are widely different. It is often necessary for travellers of the upper classes, even for English ladies, ignorant perhaps of the native languages, and with young children at their breasts, to perform journeys of many miles, over uninhabited wastes, and through jungles in which it is dangerous to linger for a moment, in palanquins borne by persons of the lowest class. If, as sometimes happens, those persons should, in a solitary place, set down the palanquin and run away, it is difficult to conceive a more distressing situation than that in which their employer would be left. None but very high damages, would be any reparation for such a wrong. But the class of people by whom

alone such a wrong is at all likely to be committed can pay no damages. The whole property of all the delinquents would probably not cover the expense of prosecuting them civilly. It therefore appears to us that breaches of contract of this description may, with strict propriety, be treated as crimes."

The provisions which have been framed on this subject apply, it will be perceived only to certain exceptional cases, and do not extend to ordinary breaches of contracts of service.

Such laws as Regulation VII. of 1819, Section 6, of the Bengal Code, (which authorizes the punishment of menial servants who quit their employers before the expiration of the term for which they are hired or without certain notice,) and Regulation XII. of 1827 of the Bombay Code, Section 18, by which servants are punishable for omission or negligent performance of their duty,—are not affected by the present provisions.

There are also some special laws in force on this subject. Thus, seamen who desert from their ships, are punishable by Act I. of 1859 (Sections 83—88). Artificers and others who, after having received advances of money, neglect or refuse to perform the work contracted for are punishable in certain towns and other places by Act XIII. of 1859. Such laws are not affected by this Code.

It will be noticed that the following provisions apply only to cases in which there is a lawful contract of service.

490. Whoever, being bound by a lawful contract to render his personal service during a voyage or journey. in conveying or conducting any person, or any property, from one place to another place, or to act as servant to any person during a voyage or journey, or to guard any person or property during a voyage or journey, voluntarily omits so to do, except in the case of illness or ill-treatment, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to one hundred Rupees, or with both.

Illustrations.

(a) A, a palanquin bearer, being bound by legal contract to carry Z from one place to another, runs away in the middle of the stage. A has committed the offence defined in this Section.

(b) A, a cooly, being bound by lawful contract to carry Z's baggage from one place to another, throws the baggage away. A has committed the offence defined in this Section.

(c) A, a proprietor of bullocks, being bound by legal contract to convey goods on his bullocks from one place to another, illegally omits to do so. A has committed the offence defined in this Section.

(d) A by unlawful means compels B, a cooly, to carry his baggage. B in the course of the journey puts down the baggage and runs away. Here as B was not lawfully bound to carry the baggage, he has not committed any offence.

Explanation. It is not necessary to this offence that the contract should be made with the person for whom the service is to be performed. It is sufficient if the contract is legally made with any person, either expressly or impliedly, by the person who is to perform the service.

Illustration.

A contracts with a Dâk Company to drive his carriage for a month. B employs the Dâk Company to convey him on a journey, and during the month the Company supplies B with a carriage which is driven by A. A in the course of the journey voluntarily leaves the carriage. Here although A did not contract with B, A is guilty of an offence under this Section.

491. Whoever, being bound by a lawful contract to attend on or to supply the wants of any person who by reason of youth, or of unsoundness of mind, or of a disease or bodily weakness, is helpless or incapable of providing for his own safety, or of supplying his own wants, voluntarily omits so to do, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred Rupees, or with both.

“Persons who contract to take care of infants, of the sick, and of the helpless, lay themselves under an obligation of a very peculiar kind, and may, with propriety, be punished if they omit to discharge their duty. The misery and distress

which their neglect may cause, is such as the largest pecuniary payment would not repair. They generally come from the lower ranks of life, and would be unable to pay anything. We therefore propose to add to this class of contracts the sanction of the penal law."

492. Whoever, being bound by lawful contract in writing to work for another person as an artificer, workman or laborer, for a period not more than three years, at any place within British India to which by virtue of the contract he has been or is to be conveyed at the expense of such other, voluntarily deserts the service of that other during the continuance of his contract, or without reasonable cause refuses to perform the service which he has contracted to perform, such service being reasonable and proper service, shall be punished with imprisonment of either description for a term not exceeding one month, or with fine not exceeding double the amount of such expense, or with both; unless it shall appear that the employer has ill-treated him or neglected to perform the contract on his part.

Breach of a contract to serve at a distant place to which the servant is conveyed at the master's expense.

Artificers and labourers who are bound by written contracts of service to serve their masters in distant places to which they are conveyed or intended to be conveyed at their master's expense, are made criminally liable for breach of contract: thus labourers conveyed or engaged to be conveyed from other parts of India to the provinces of Pegu, Assam, &c., are punishable for breach of contract under this Section. The terms of the contract, which must be in writing, should be consulted and also regard should be had to common usages to ascertain whether there has been a breach or desertion of service without reasonable cause. It will be observed that there can be no conviction under this Section if ill-treatment on the part of the employer, or a neglect on his part to perform the contract, is proved.

CHAPTER XX.

OF OFFENCES RELATING TO MARRIAGE.

493. Every man who by deceit causes any woman who is not lawfully married to him, to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that belief, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Cohabitation caused by a man deceitfully inducing a belief of lawful marriage.

The offence here made punishable is committed when a man, whether married or unmarried, induces a woman to become, as she thinks, his wife, but in reality his concubine. The form of the marriage ceremony depends on the race or religion to which the persons contracting the marriage may belong. Where races are mixed as in India, and religion may be changed or dissembled, this offence may be committed by a person falsely causing a woman to believe that he is of the same race or creed as herself, and thus inducing her to contract a marriage, in reality unlawful, but which according to the law under which she lives, is valid. Suppose a person half English half Asiatic by blood, calls himself a Mahomedan or a Hindoo and by this deception causes a Mahomedan or Hindoo woman to go through the ceremony of marriage in a form which she deems valid and to cohabit with him, he has committed this offence. A man who deceives a woman into the belief that a certain ceremony which he causes to be performed by some accomplice, constitutes a valid marriage, and thus induces the woman to cohabit with him, may be punished under this Section.

494. Whoever, having a husband or wife living, ^{Marrying again during the life-time of husband or wife.} marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

The offence known to the English Law as Bigamy is here made punishable. This portion of the Penal Code involving, as it does, the English Law of marriage and divorce, cannot usefully be made the subject of a full comment here.

Supposing it to be admitted or established that the accused person belongs to a country or is of a religious creed which does not recognise polygamy, or that, according to the law of marriage under which that person lives, the case is one "in which such (second) marriage is void by reason of its taking place during the life of such husband or wife," the charge of bigamy requires to be supported by the following proof: 1, the first marriage of the accused must be proved; 2, his second marriage must then be proved; and 3, it must be shown that his first wife was alive at the time of the second marriage.

An admission by the accused person of a prior marriage will probably be deemed sufficient evidence in the first instance of a valid marriage. Where the first marriage took place not within any part of the British dominions but in a foreign country, and there is a question concerning the validity of such marriage, the law of the foreign country must be ascertained. The general principle with regard to marriages contracted in a foreign country is, that between persons of full age, marriage is to be decided by the law of the place where it is celebrated. If valid there, it is valid every where. If invalid there, it is equally invalid everywhere. But there are exceptions to this rule. On the one hand a Christian country would not recognise as lawful, polygamy, or some incestuous marriages contracted by Christians while residing in Mahomedan or other countries. On the other hand, wherever there is a local neces-

sity from the absence of laws or the presence of prohibitions or obstructions not binding upon other countries, or from peculiarities of religious opinions, or conscientious scruples, or from circumstances of exemption from local jurisdiction, marriages will be allowed to be valid according to the law of the native country. Thus persons residing in factories, in conquered places, and in desert or barbarous countries, or in countries of an opposite religion, are allowed to contract marriage there according to the laws of their own country.

As to the mode of proving the law of a foreign country see Act II. of 1855, Section 12.

If the accused person is not a subject of the Queen, and the second marriage was contracted out of the Queen's dominions, he cannot, it seems, be punished under this Code. If the second marriage shall have taken place in India, the offender may be punished under the present Section. Whether the second marriage takes place in India or elsewhere, if it is contracted by a person professing the Christian religion, who is a subject of the Queen, he appears to be punishable by a Supreme Court under the provision of the Statute which is quoted below.*

Supposing a charge of bigamy to be *primâ facie* established by proof of the circumstances abovementioned, the accused may show that the case falls within one of the following exceptions and that therefore the offence has not been committed.

* By the statute 9, George IV. chapter 74, (*for improving the Administration of Criminal justice in the East Indies*) Section 70, it is enacted that "if any person professing the Christian religion, being married, shall marry any other person during the life of the former husband or wife, whether the second marriage shall have taken place in the East Indies or elsewhere, every such offender shall be guilty of felony, and being convicted thereof shall be liable to be transported to such place as the Court shall direct, for the term of seven years, or to be imprisoned for any term not exceeding two years; and every such offence may be dealt with, inquired of, tried, determined and punished by any of His Majesty's Courts of justice within the British territories under the Government of the said United Company, within the jurisdiction of which the offender shall be apprehended or be in custody, as if the offence had been actually committed within such jurisdiction: Provided always, that nothing herein contained shall extend to any second marriage contracted out of His Majesty's dominions by any other than a subject of His Majesty, or to any person marrying a second time whose husband or wife shall have been continually absent from such person for the space of seven years then last past," &c. &c.

Exception.—This Section does not extend to any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction : nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time, provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted, of the real state of facts so far as the same are within his or her knowledge.

If the first marriage has been declared void by the sentence of a competent Court, the second marriage is not of course an offence.

If it can be shown on behalf of the accused that his wife (or husband as the case may be) has been continually absent from him for the space of seven years and was not known by him to be living within that time, or has not been heard of by him as being alive within that time, he is protected by this Exception. It must appear that the accused was ignorant during the whole of the seven years of his wife's existence. An accused person, setting up this defence, ought probably to show that he has used such reasonable means as were within his power to inform himself of the fact. If he neglects palpable means of availing himself of information on the subject, he will not stand excused.

But the proviso to this Exception confines its application to cases, in which the accused before the second marriage, discloses the real state of the case and such knowledge as he (or she) may have concerning the circumstances, to the person about to be married. No offence is committed if, when the second marriage takes place, both the man and the woman are aware of the facts which render the existence of the former husband or wife uncertain.

495. Whoever commits the offence defined in the last preceding Section, having concealed from the person with whom the subsequent marriage is contracted the fact of the former marriage, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Same offence with concealment of the former marriage from the person with whom subsequent marriage is contracted.

The Indian Law Commissioners say, "The act which, in the English law, is designated as bigamy, is always an immoral act. But it may be one of the most serious crimes that can be committed. It may be attended with circumstances which may excuse, though they cannot justify it.

"The married man who, by passing himself off as unmarried, induces a modest woman to become, as she thinks, his wife, but in reality his concubine, and the mother of an illegitimate issue is guilty of one of the most cruel frauds that can be conceived. Such a man we would punish with exemplary severity.

"But suppose that a person arrives from England and pays attention to one of his countrywomen at Calcutta. She refuses to listen to him on any other terms than those of marriage. He candidly owns that he is already married. She still presses him to go through the ceremony with her. She represents to him that if they live together without being married she shall be an outcast from society, that nobody in India knows that he has a wife, that he may very likely never fall in with his wife again, and that she is ready to take the risk. The lover accordingly agrees to go through the forms of marriage. It cannot be disputed that there is an immense difference between these two cases."

496. Whoever, dishonestly or with a fraudulent intention, goes through the ceremony of being married, knowing that he is not thereby lawfully married, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Marriage ceremony gone through with fraudulent intent.

A person, who by deceit, causes a woman to cohabit with him, under the belief that she is his lawful wife, is punishable under Section 493. Whether there is deceit or not as between the man and woman, if there is a dishonest or fraudulent intention (within the meaning of Sections 24, 25) on the part of those or either of those who go through the marriage ceremony knowing the marriage is not a lawful one, the present Section is applicable. As in the case of a pretended lawful marriage, to enable the parties to obtain property so settled as to come to one of them on marriage; or, as if a man wishing to obtain money, jewels or other property belonging to a woman, should deceive her into going through an invalid marriage ceremony, in order that he may obtain them.

The mere abuse of the formalities of marriage where there is no deceit practised on the woman, and no "dishonest or fraudulent" intention, is not an offence punishable by this Code whether the ceremony partakes of a religious character or not.

497. Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case the wife shall not be punishable as an abettor.

Adultery.

The offence of rape has been defined by Section 375. When the sexual intercourse does not amount to that offence, and when it takes place between a stranger and a woman who is, and whom the offender knows or has reason to believe to be the wife of another man, the offence of adultery is committed.

In support of a charge of adultery, there must be proof: 1, that the woman is married; 2, of the sexual intercourse; 3, of the circumstances which tend to show that the accused person at the time knew, or had reason to believe, that the woman was the

wife of another man. If it appears that the intercourse was by consent or connivance of the husband, this offence has not been committed. The character of both husband and wife, and the terms on which they live together, should be regarded. The Courts should carefully watch the evidence in such cases, to ascertain that by collusion between a husband and wife, false accusations are not brought forward. According to the present law, Act II. of 1845, no person but the husband of the woman can prosecute for this offence. The Code of Criminal Procedure will probably contain a provision to this effect.

It will be seen that the wife is not punishable for this offence. On this subject the Indian Law Commissioners say, " Though we well know that the dearest interests of the human race are closely connected with the chastity of women, and the sacredness of the nuptial contract, we cannot but feel that there are some peculiarities in the state of society in this country, which may well lead a humane man to pause, before he determines to punish the infidelity of wives. The condition of the women of this country is unhappily very different from that of the women of England and France. They are married while still children. They are often neglected for other wives while still young. They share the attentions of a husband with several rivals. To make laws for punishing the inconstancy of the wife, while the law admits the privilege of the husband to fill his zenana with women, is a course which we are most reluctant to adopt."

498. Whoever takes or entices away any woman who is and whom he knows or has reason to believe to be the wife of any other man from that man or from any person having the care of her on behalf of that man, with intent that she may have illicit intercourse with any person, or conceals or detains with that intent any such woman, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Enticing or taking away or detaining with a criminal intent a married woman.

The kidnapping or abduction of women and children for criminal purposes, are offences made punishable by former Sections (see Sections 366—369). The offence which the present Section punishes is the taking or enticing away for the unlawful purpose mentioned, a married woman from her husband or from those who have the care of her on his behalf. A similar offence is in Bengal punishable by the present law, see Regulation VII. of 1819 of the Bengal Code. It is immaterial whether the wife is shown to be a consenting party or not. Her guilt or innocence is not in question.

To support a charge under this Section, it must be proved : 1, that the woman is married and that this is known to the offender, or that he has reason to believe it ; 2, that she has been taken or enticed from her husband, or from her relatives or friends with whom she may be living in her husband's absence ; 3, that the intention of the taker is, that the woman may have illicit sexual intercourse with himself or some other person. Persons who conceal or detain a woman who has been so taken away, knowing the circumstances and having the guilty intention abovementioned, are also punishable under the present Section. It is this intention which is the main ingredient in the offence. A person who, being a relative of a married woman should take her away from her husband's house or should conceal or detain her from her husband on account of the misconduct or cruelty of the husband or for any other cause, but without any intention that she should have illicit intercourse with any person, commits no offence.

CHAPTER XXI.

OF DEFAMATION.

The offence of Defamation, as it is defined in this Code, consists in the injury offered to reputation, not in any breach of the peace or other consequence that may result from it. The

essence of the offence consists in its tendency to cause that description of pain, which is felt by a person who knows himself to be the object of the unfavorable sentiments of his fellow-creatures, and those inconveniences to which a person, who is the object of such unfavorable sentiments, is exposed.

It will be the duty of the Judge in the trial of such cases not to decide the question whether an imputation is or is not defamatory by reference to any particular standard, however correct, of honor, of morality, or of taste ; but to extend an impartial protection to opinions which he regards as erroneous, and to feelings with which he has no sympathy. India is inhabited by races which differ widely from each other in manners, tastes, and religious opinions. Practices which are regarded as innocent by one large portion of society, excite the horror of another large portion. A Hindoo would be driven to despair if he knew that he was believed by persons of his own race to have done something which a Christian or a Musulman would consider as indifferent or as laudable. Where such diversities of opinion exist, that part of the law which is intended to prevent pain arising from opinion, ought to be sufficiently flexible to suit those diversities.

No distinction is made between written and spoken defamation. The offence is committed whether the words are spoken, written, printed or engraved, or in whatever manner the words, signs, or visible representations conveying the imputation, are expressed.

499. Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.

Explanation 1. It may amount to defamation to

impute any thing to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2. It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3. An imputation in the form of an alternative, or expressed ironically, may amount to defamation.

Explanation 4. No imputation is said to harm a person's reputation unless that imputation directly or indirectly in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

Illustrations.

(a) A says—"Z is an honest man; he never stole B's watch;" intending to cause it to be believed that Z did steal B's watch. This is defamation, unless it fall within one of the exceptions.

(b) A is asked who stole B's watch. A points to Z, intending to cause it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the exceptions.

(c) A draws a picture of Z running away with B's watch, intending it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the exceptions.

If an imputation has no tendency to harm a person in his reputation, it will not amount to defamation, although its effect may be to cause that person to suffer in his interests. Thus A falsely tells B, who is a public servant having an office at his disposal, that Z, to whom B intends to offer that office, will not accept it. B, in consequence, gives that office to another. Here Z, though he suffers in his interests, is not harmed in his reputation, and therefore is not defamed.

An imputation which is defamatory when directed against one person, is not necessarily defamatory when directed against

another person. Thus it may harm the reputation of one man to say that he drinks wine, that he eats beef, &c.,—acts which without offence may be imputed to another man and admitted by him without harm to his reputation.

The essence of the offence is the intention or knowledge of the offender that the imputation may harm some person's reputation. Where no such intention or knowledge exists, the offence of defamation is not committed. The journeyman printer may be acquitted of defamation on the ground that in setting the types for printing defamatory matter and so aiding towards the circulation thereof, he had not the intention described in the definition, while the person who wrote the defamatory matter, for printing which the journeyman ignorantly set the types, may be convicted, because it may be clear that his purpose was to defame.

First Exception. It is not defamation to impute any thing which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

Imputation of any truth which the public good requires to be made or published.

“It is easy to put cases about which there could scarcely be any difference of opinion. A person who has been guilty of gross acts of swindling, at the Cape, comes to Calcutta, and proposes to set up a house of agency. A person who has been forced to fly from England, on account of his infamous vices, repairs to India, opens a school, and exerts himself to obtain pupils. A captain of a ship induces natives to emigrate, by promising to convey them to a country where they will have large wages and little work. He takes them to a foreign colony where they are treated like slaves, and returns to India to hold out similar temptations to others. A man introduces a common prostitute, as his wife, into the society of all the most respectable ladies of the Presidency. A person in a high station is in the habit of encouraging ruinous play among

young servants of the Government.” In all these cases, a writer who publishes the truth renders a great service to the public.

On the other hand there are undoubtedly many cases in which the spreading of true reports prejudicial to the character of an individual, would hurt the feelings of that individual, without producing any compensating advantage to the public. “The proclaiming to the world that a man keeps a mistress, that he is too much addicted to wine, that he is penurious in his house-keeping, that he is slovenly in his person; the raking up of ridiculous and degrading stories about the youthful indiscretions of a man who has long lived irreproachably as a husband and a father, and who has attained some post which requires gravity, and even sanctity of character, can seldom or never produce any good to the public sufficient to compensate for the pain given to the person attacked, and to those who are connected with him.”

Second Exception. It is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no farther.

The public conduct of public functionaries is allowed to be discussed, provided that such discussion is conducted in good faith. The words “good faith” (Section 52) and “public servant” (Section 21) have been explained.

It will be observed that in this and generally in the following Exceptions, it is not required that an imputation should be true. It is requisite only that it should be made in good faith. “To require in these cases that the imputation should be true, would be to render these Exceptions mere nullities. Whether a public functionary is or is not fit for his situation—whether a person who has bestirred himself to get up a petition in favor of a public measure, ought to be considered as an enlightened

and public-spirited citizen or as a foolish meddler—whether a person who has been tried for an offence was or was not guilty—which of two witnesses who contradicted each other on a trial ought to be believed—whether a portrait is like—whether a song has been well sung—whether a book is well written—these are questions about which honest and discerning men may hold opinions diametrically opposite : and to require a man to prove to the satisfaction of a Court of law that the opinion which he has expressed on such a question is a right opinion, is to prohibit all discussion on such questions.”

Third Exception. It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question and respecting his character, so far as his character appears in that conduct, and no further.

Illustration.

It is not defamation in A to express in good faith any opinion whatever respecting Z's conduct in petitioning Government on a public question, in signing a requisition for a meeting on a public question, in presiding or attending at such a meeting, in forming or joining any society which invites the public support, in voting or canvassing for a particular candidate for any situation in the efficient discharge of the duties of which the public is interested.

“There are public men who are not public functionaries. Persons who hold no office may yet take a very active part in urging or opposing the adoption of measures in which the community is deeply interested. Every person is allowed to comment in good faith on the proceedings of these volunteer servants of the public with the same freedom with which he is allowed to comment on the proceedings of the official servants of the public.”

Fourth Exception. It is not defamation to publish a substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings.

Explanation. A Justice of the Peace or other officer holding an enquiry in open Court preliminary to a trial in a Court of Justice, is a Court within the meaning of the above Section.

Fifth Exception. It is not defamation to express in good faith any opinion whatever respecting the merits of any case, Civil or Criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness, or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no farther.

Merits of a case decided in a Court of Justice ; or conduct of witnesses and others concerned therein.

Illustrations.

(a) A says—"I think Z's evidence on that trial is so contradictory that he must be stupid or dishonest." A is within this Exception if he says this in good faith ; inasmuch as the opinion which he expresses respects Z's character as it appears in Z's conduct as a witness, and no further.

(b) But if A says—"I do not believe what Z asserted at that trial, because I know him to be a man without veracity,"—A is not within this Exception, inasmuch as the opinion which he expresses of Z's character is an opinion not founded on Z's conduct as a witness.

"All persons are allowed freely to discuss in good faith the proceedings of Courts of law, and the characters of parties, agents, and witnesses, as connected with those proceedings. It is almost universally acknowledged that the Courts of law ought to be thrown open to the public. But the advantage of throwing them open to the public will be small indeed, if the few who are able to press their way into a Court are forbidden to report what has passed there to the vast numbers who were absent, or if those who are allowed to know what has passed are not allowed to comment on what has passed."

Sixth Exception. It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the charac-

Merits of a public performance.

ter of the author, so far as his character appears in such performance, and no further.

Explanation. A performance may be submitted to the judgment of the public expressly or by acts on the part of the author which imply such submission to the judgment of the public.

Illustrations.

- (a) A person who publishes a book, submits that book to the judgment of the public.

(b) A person who makes a speech in public, submits that speech to the judgment of the public.

(c) An actor or singer who appears on a public stage, submits his acting or singing to the judgment of the public.

(d) A says of a book published by Z. "Z's book is foolish, Z must be a weak man. Z's book is indecent, Z must be a man of impure mind." A is within this Exception, if he says this in good faith, inasmuch as the opinion which he expresses of Z respects Z's character only so far as it appears in Z's book, and no farther.

(e) But if A says—"I am not surprised that Z's book is foolish, and indecent, for he is a weak man, and a libertine." A is not within this Exception, inasmuch as the opinion which he expresses of Z's character is an opinion not founded on Z's book.

Seventh Exception. It is not defamation in a person having over another any authority, either conferred by law, or arising out of a lawful contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.

Censure passed in good faith by a person having lawful authority over another.

Illustration.

A judge censuring in good faith the conduct of a witness, or of an officer of the Court; a head of a department censuring in good faith those who are under his orders; a parent censuring in good faith a child in the presence of other children; a schoolmaster, whose authority is derived from a parent, censuring in good faith a pupil in the presence of other pupils; a master censuring a servant in good faith for remissness in service; a banker censuring in good faith the cashier of his Bank for the conduct of such cashier as such cashier—are within this exception.

Eighth Exception. It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful

Accusation preferred in good faith to a duly authorized person.

authority over that person with respect to the subject matter of accusation.

Illustration.

If A in good faith accuses Z before a Magistrate ; if A in good faith complains of the conduct of Z, a servant, to Z's master ; if A in good faith complains of the conduct of Z, a child, to Z's father ; A is within this Exception.

Ninth Exception. It is not defamation to make an imputation on the character of another, provided

Imputation made in good faith by a person for the protection of his interests or for the public good.

that the imputation be made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good.

Illustrations.

(a) A, a shopkeeper, says to B, who manages his business, " Sell nothing to Z unless he pays you ready money, for I have no opinion of his honesty." A is within the Exception, if he has made this imputation on Z in good faith, for the protection of his own interests.

(b) A, a magistrate, in making a report to his superior officer, casts an imputation upon the character of Z. Here if the imputation is made in good faith and for the public good, A is within the Exception.

Tenth Exception. It is not defamation to convey a caution, in good faith,

Caution intended for the good of the person to whom it is conveyed, or for the public good.

to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.

500. Whoever defames another shall be punished with simple imprisonment for a term which may extend to

Punishment for defamation.

two years, or with fine, or with both.

501. Whoever prints or engraves any matter,

Printing or engraving matter known to be defamatory.

knowing or having good reason to believe that such matter is defamatory of any person, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

502. Whoever sells or offers for sale any printed or engraved substance containing defamatory matter, knowing that it contains such matter, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

CHAPTER XXII.

OF CRIMINAL INTIMIDATION, INSULT, AND ANNOYANCE.

This Chapter is in some sort supplementary to the Chapter of Defamation. An imputation which is not defamatory under the definition explanations and exceptions in that Chapter may, under certain circumstances, be punishable on other grounds. For example, an imputation which is insulting though not defamatory may be uttered in the hearing of the person who is the object of it, for the purpose of provoking that person to break the public peace. If so, it is punishable under Section 504. "There are many cases in which it is fit that unpleasant truth should be told respecting an individual. But there is no case in which it is desirable that such truth should be told in such a way that the telling of it is a gross personal outrage. A person who has detected, or thinks that he has detected, a dishonest misrepresentation in a book, has a right to expose it publicly. But he cannot be allowed to intrude into the presence of the author of the book, and to tell him to his face that he is a liar. A person who knows the mistress of a female school to be a woman of infamous character, deserves well of society if he states what he knows. But he cannot be allowed to follow her through the streets calling her by opprobrious names, though he may be able to prove that all those names

were merited. A person who brings to notice the malversation of a public functionary deserves applause. But a person who hangs a public functionary in effigy at that functionary's door, with an opprobrious label, does what cannot be permitted, even though every word on the label, and every imputation which the exhibition was meant to convey, may be perfectly true."

503. Whoever threatens another with any injury

Criminal intimidation. to his person, reputation, or property, or to the person or

reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

Explanation. A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this Section.

Illustration.

A, for the purpose of inducing B to desist from prosecuting a civil suit, threatens to burn B's house. A is guilty of criminal intimidation.

Where the threats are intended to put a person in fear and thereby to dishonestly induce a person to deliver property, they may amount to offences punishable under Sections 385 or 389. Such threats as the following would fall within the present definition. Threats to cause hurt to a person or to his child, wife, relative, &c. Threats to cause mischief on property, or to kill or wound any animal which is property, or to commit the offence of house-breaking, or to commit any mischief or trespass by means of a riotous or unlawful assembly, threats to impute unnatural lust to a person, &c.

The threat must be made either with intent to cause alarm to the person threatened or to overcome his free will and to in-

duce him to do or omit something which he is not legally bound to do or omit. The question whether the threat amounts to a criminal intimidation or not, does not depend on the nerves of the individual threatened : if it is such a threat as may overcome the ordinary free will of a firm man, or, whatever the nature of the threat, if it is made with the intention mentioned in the Section, it is an offence.

A threat of a trivial kind, calculated perhaps to give pain, but not to cause alarm, will probably be deemed to fall within the Exception in Section 95.

If the intention of the person threatening is to cause the person threatened to do an act which he is bound to do, such as to pay a just debt or demand, it may nevertheless amount to criminal intimidation, if the intention is to cause alarm to that person by a threat of injury.

504. Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Insult intended to provoke a breach of the peace.

The insults, however deliberate and intentional, are only punishable as offences when they are intended to provoke a breach of the peace or an affray (see Section 159). The Court must be satisfied not merely that there has been intentional insult and provocation, but also that the offender gave the provocation intending or knowing it to be likely that it would cause a breach of the peace. Ordinarily such an intention may be inferred from the circumstances attending the insult. The offence is not made to depend upon the sensitive feelings or excitable temper of the person insulted, but on the intention or knowledge of the offender.

505. Whoever circulates or publishes any statement, rumour, or report, which he knows to be false, with intent to cause any officer, soldier, or sailor in the Army or Navy of the Queen to mutiny, or with intent to cause fear or alarm to the public and thereby to induce any person to commit an offence against the state or against the public tranquillity, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

False statements, rumours, &c. circulated with intent to cause mutiny, or offences against the public peace.

The statement, rumour or report, whether it is circulated or made public by words, by writings, or by signals or otherwise, if it is known by the person who publishes it to be false and if it is intended to cause mutiny (see Chapter VII. of Offences relating to the Army and Navy) is punishable as an offence under this Section. It is also punishable if it is intended to cause fear or alarm to the public, or to any class of the public, or any community (see Section 12), and thereby to induce any person to commit any offence within the sixth or eighth Chapters of this Code.

506. Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both; and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or transportation, or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Punishment for criminal intimidation.

If threat be to cause death or grievous hurt, &c.

If the criminal intimidation is aggravated by a threat of injury of the kind here mentioned, an increased punishment may be awarded. The offences which are punishable with death or transportation, or with imprisonment for seven years, are mentioned at pages 33—35.

507. Whoever commits the offence of criminal intimidation by an anonymous communication, or having taken precaution to conceal the name or abode of the person from whom the threat comes, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to the punishment provided for the offence by the last preceding Section.

If the criminal intimidation is by an anonymous letter, or by a letter signed with a false name, and the letter is dropped on a road or is intended to be put in a place where it is likely to be seen and read by the person for whom it is intended, or to be found by some other person who it is expected will forward it to the person for whom it is intended, the offence will be subject to punishment under this Section.

508. Whoever voluntarily causes or attempts to cause any person to do any thing which that person is not legally bound to do, or to omit to do any thing which he is legally entitled to do by inducing or attempting to induce that person to believe that he or any person in whom he is interested will become or will be rendered by some act of the offender an object of divine displeasure if he does not do the thing which it is the object of the offender to cause him to do, or if he does the thing which it is the object of the offender to cause him to omit, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Act caused by inducing a person to believe that he will be rendered an object of the divine displeasure.

Illustrations.

(a)* A sits Dhurna at Z's door with the intention of causing it to be believed that by so sitting he renders Z an object of divine displeasure. A has committed the offence defined in this Section.

(b) A threatens Z that, unless Z performs a certain act, A will kill one of A's own children, under such circumstances that the killing would be believed to render Z an object of divine displeasure. A has committed the offence defined in this Section.

509. Whoever, intending to insult the modesty of

Word or gesture intended to insult the modesty of a woman. any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

A, intending to outrage the modesty of a woman, exposes his person indecently to her, or uses obscene words intending that she should hear them, or exhibits to her obscene drawings. A has committed this offence. If the intrusion upon the woman's privacy is by entering her house or rooms, &c., the offence may come within the definition of criminal trespass (see Section 441).

* This Illustration does not mention the thing which it is the object of the offender to cause to be done or omitted. Suppose his object to be the enforcing of a just claim, as if a creditor who has repeatedly in vain urged his debtor to pay him, finding that he has no chance of recovering his money without a troublesome and expensive lawsuit, attempts the mode of recovery by sitting *dhurna* which is mentioned in the following extract; the creditor may in such a case have adopted improper means for enforcing his just claims, but he does not attempt to cause a person to do what such person is not legally bound to do. In Strange's Elements of Hindu Law, it is stated—"Nor is a suit the only mode of enforcing it (payment of a debt): the text of Menu, cited in the Mitacshara, authorising the recovery of a man's property, by the aid of laws, divine or human; by stratagem; by the practice of *acharitum*; and even by force:"—by *acharitum*, being meant that remarkable one of sitting *dhurna* at the door of the debtor, abstaining from food; till, by the fear of the creditor dying at his door, compliance, on the part of the debtor, is exacted;—an alarming species of importunity, prohibited in the Bengal Provinces, by one of the Bengal Regulations; the preamble to which, drawn up by the late Mr. Duncan, while President at Benares, gives an interesting description of this extraordinary proceeding, &c., &c.

G. H. A.

510. **Whoever, in a state of intoxication, appears in any public place, or in any place which it is a trespass in him to enter, and there conducts himself in such a manner as to cause annoyance to any person, shall be punished with simple imprisonment for a term which may extend to twenty-four hours, or with fine which may extend to ten Rupees, or with both.**

Misconduct in public by a drunken person.

Mere intoxication is not made punishable. But if a person appears in a public place, as in a street, in a public assembly, in a railway carriage, &c., in a state of drunkenness, or if in such a state, he intrudes into a private house or into any other place where he has not a right to go, and thereby (it may be unintentionally) causes annoyance, he commits the offence here made punishable. A person whether drunk or sober who trespasses on property with intent to insult or annoy any person in possession of such property, commits "criminal trespass;" and may be punished for that offence, (see Sections 441, 447).

CHAPTER XXIII.

OF ATTEMPTS TO COMMIT OFFENCES.

511. **Whoever attempts to commit an offence punishable by this Code with transportation or imprisonment, or to cause such an offence to be committed and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment of such attempt, be punished with transportation or imprisonment of any description provided for the offence, for a term of transportation or imprisonment**

Punishment for attempt to commit offences.

which may extend to one-half of the longest term provided for that offence, or with such fine as is provided for the offence, or with both.

Illustrations.

(a) A makes an attempt to steal some jewels by breaking open a box, and finds after so opening the box that there is no jewel in it. He has done an act towards the commission of theft, and therefore is guilty under this Section.

(b) A makes an attempt to pick the pocket of Z by thrusting his hand into Z's pocket. A fails in the attempt in consequence of Z's having nothing in his pocket. A is guilty under this Section.

“An offence punishable with transportation or imprisonment.” It will be seen that this description comprehends most of the offences punishable by this Code. (See pages 34—39.)

“Where no express provision is made, &c.” There are many express provisions for the punishment of attempts. See for instance the Chapter of Offences against the State : and also Sections 161—163, 196, 198, 213, 241, 307, 309, 385, 387, 389, 391, 395, &c.

The Illustrations above given are cases of attempts in which the offence contemplated cannot be committed (the box or pocket being empty), but the act done towards the commission has been carried to such a length as the offender considered sufficient to effect his purpose. He has used all such exertions for the purpose in view as he would have used if he had been successful, but he is foiled by something not dependent on his own will. It is the same as if he had fired a loaded gun at a man intending to murder him, but had missed his aim.

The words “does any act towards the commission of the offence” may well include acts less near to the consummation of the offence than those just mentioned. But these words must not, it seems, be construed to include all acts however remote which tend towards the commission of the offence. The thing done may be too small or it may proceed too short a way towards the accomplishment of the offence for the law to notice it as an attempt. The following are Illustrations of this (see Section 307).—

A, intending to murder Z, buys a gun for the purpose of loading it and firing at Z.

A, intending to murder Z by poison, purchases poison and has it in his possession.

A, intending to commit a murder, is seen to walk towards the place of the contemplated murder.

Such acts as these are in themselves ambiguous, and are not so immediately connected with the offence as to make the doers punishable under this Section.

It is impossible to lay down a clear rule on such a subject, or to define what is such an act done in furtherance of a criminal intent as will constitute an attempt. As has been said, acts remotely tending towards the commission of an offence are not, it seems, sufficient to bring a case within this Section. On the other hand acts immediately and necessarily connected with the commission of the offence, and which constitute a commencement of execution of the offence, not being completed only because the offender is hindered by circumstances independent of his will, as by seizure by the police, &c., are attempts.

The Court should be satisfied that the offender had in his mind the design to commit a certain offence, and that he had begun to move towards an execution of his purpose : there must also be proof of some act not of an ambiguous kind, but directly approximating to the commission of the offence. When the offender's design is made manifest by any such act, it becomes an attempt cognizable as an offence and punishable under this Section.

The Chapters of Offences relating to Coin and Government Stamps, to Weights and Measures, to Documents and to Trade or Property Marks, contain provisions for the punishment as substantive crimes of various acts tending towards the commission of the offences contained in those Chapters, such as preparing instruments or materials for the commission of such offences, being in possession of such instruments or materials with intent to use them, &c.

ATTEMPTS TO COMMIT OFFENCES.

“Or to cause such an offence to be committed.” A common form of attempt is the soliciting of another to commit an offence—as to incite a servant to steal his master’s goods—incite a person to commit murder or hurt,—to make overture to another to commit an unnatural offence. The act done towards the commission of the offence may consist in such cases in solicitation itself, or—if this should not be considered a sufficient act—in the offer of a bribe, or some such act of instigation. It will not affect the offence though the person solicited declines the persuasion. Attempts of this description will ordinarily amount to offences punishable under the Chapter of Abettors.

“For a term which may extend to one half of the longest term of transportation, &c.” In calculating this term, if transportation for life is a punishment provided for the offence which has been attempted, such transportation must be reckoned as equivalent to transportation for twenty years (see Section 57). The Court may impose a fine equal in amount to the fine provided for the offence, but where no sum is expressly mentioned which the fine may extend to, the amount must not exceed £100. (See Section 36.)

I N D E X.

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